



This is the 1st affidavit of
Supriya Sarin in this case and was
made on May 27, 2019

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CANADIAN IMPERIAL BANK OF COMMERCE

PLAINTIFF

AND

VINCO HOLDINGS LTD AND WATERWAY HOUSEBOATS LTD.

DEFENDANTS

AFFIDAVIT

I, **Supriya Sarin**, of Commerce Court North, 25 King Street West, 16th Floor, Toronto, Ontario, businesswoman, AFFIRM THAT:

1. I am the Senior Director of Special Loans at the Canadian Imperial Bank of Commerce ("**CIBC**"), the Plaintiff in this proceeding, and as such I have personal knowledge of the matters deposed to in this Affidavit except where I depose to a matter based on information from an informant I identify in which case I believe that both the information from the informant and the resulting statement are true.

2. This affidavit is made in support of an application to appoint Alvarez and Marsal Canada Inc. ("**Alvarez & Marsal**") as receiver (the "**Receiver**") over the property, assets and undertakings of the Defendants pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 39 of the *Law and Equity Act*.

INTRODUCTION

3. Vinco Holdings Ltd. ("**Vinco**") owns three pieces of real property in Sicamous, B.C. These parcels include a waterfront property (the "**Mervyn Road Property**") that is rented by Waterway Houseboats Ltd. ("**Waterway Houseboats**", together with Vinco, the "**Defendants**") to operate a houseboat rental business.

4. CIBC provided a demand loan to Vinco pursuant to a Credit Agreement dated December 8, 2011 (together with all amendments thereto, the "**Credit Agreement**"). As of the date of this affidavit, an amount of approximately \$8 million is owed to CIBC by Vinco. Waterway Houseboats has guaranteed Vinco's obligations to CIBC under the Credit Agreement.

5. CIBC is the primary secured lender to the Defendants and holds a first ranking charge on the vast majority of the Defendants' assets.

6. The Defendants' obligations to CIBC under the Credit Agreement and related agreements are secured by, among other things, mortgages over the three properties located in British Columbia owned by Vinco, including the Mervyn Road Property, as well as general security agreements in favour of CIBC over the personal property of both Vinco and Waterway Houseboats.

7. Vinco has been in default of its obligations under the Credit Agreement for over six months. Notwithstanding such defaults, and at the request of the Defendants, CIBC refrained from taking enforcement steps and has allowed the Defendants months to explore potential solutions to their financial difficulties and to cure the various defaults under the Credit Agreement, including by entering into a forbearance agreement (the "**Forbearance Agreement**") with the Defendants earlier this year.

8. Recent material adverse changes have negatively impacted the Defendants' business and future outlook. In particular, the financial circumstances of the Defendants have not improved and in fact have further deteriorated. Recent financial forecasts provided by the Defendants to CIBC indicate that a material cash flow deficiency will occur in the Defendants' business in the coming weeks and months, with no apparent prospect for the significant further funding that would be needed in the circumstances.

THE DEFENDANTS' BUSINESS

9. Vinco, the borrower of funds under the Credit Agreement, owns three parcels of real property in Sicamous, B.C, including the Mervyn Road Property. The principal of Vinco is John Vinje.

10. Waterway Houseboats, an affiliate of Vinco, is the operating entity for the houseboat rental business. It owns nine houseboats. It also contracts with third party houseboat owners (the "**Third Party Owners**") to rent and maintain a fleet of approximately 50 third party owned houseboats.

11. The Defendants' operations were significantly impacted by a major flood that occurred on the Mervyn Road Property in June 2012. As a result of this flood, the Defendants, certain related entities and the Third Party Owners commenced a court action against the District of Sicamous, the Province of British Columbia and two individual landowners (the "**Action**").

THE CIBC LOAN

12. Copies of the Credit Agreement between CIBC and Vinco and the eight amendments thereto are attached to this affidavit as **Exhibits "A" – "I"**.

13. The facilities available to Vinco under the Credit Agreement are as follows:

CREDIT	DATE ADDED	PURPOSE	CONDITIONS	AMOUNT OWING (as at May 14, 2019)
Credit A: Demand Revolving Loan	December 8, 2011	To finance normal working capital requirements from time to time.	As of November 30 of 2018, the Credit Limit must reduce to \$1,000,000. A "clean-up" period applies to this facility, where the account must be in a credit balance for at least 5 consecutive days during any calendar year.	\$1,765,298.93

Credit B: Demand Installment Loan	December 8, 2011	To refinance existing Bank of Montreal loans.		\$2,000,698.56
Credit C: Demand Installment Loan	December 8, 2011	To finance the extension of a sewer line.		\$421,078.52
Credit D: Demand Installment Loan	December 8, 2011	To finance the extension of the dock facility on Vinco's property.		\$449,782.22
Credit E: Demand Installment Loan	November 10, 2014	To recapitalize the Demand Revolving Loan (Credit A) for non-recurring 2012 floor related capital expenditures, losses and expenses.	The net proceeds of the lawsuit settlement related to the 2012 flood (as described below), after repayment of 2012 accounts payable to boat owners, will be applied to a permanent reduction of this loan.	\$1,636,358.35
Credit F: Demand Installment Loan	November 18, 2015	To finance capital expenditures.		\$1,500,273.45
Credit G: Demand Installment Loan	July 4, 2018	To finance the purchase of the houseboat vessel Penelope.		\$195,822.00

14. The Credit Agreement includes, among others, the following covenants:
- (a) Adjusted Fixed Charge Coverage Ratio: Vinco's adjusted fixed charge coverage ratio is not to be less than 1.20:1, tested annually based on the combined income of the Defendants and any related holding company as designated by CIBC; and
 - (b) Capital Withdrawals: There will be no capital withdrawals by either of the Defendants without CIBC's prior consent.

15. Pursuant to the terms of the Credit Agreement, the funds provided to Vinco by CIBC are only to be used for the purposes set out in the Credit Agreement, as are summarized above. The Credit Agreement also requires that Vinco reimburse CIBC for all fees and out of pocket expenses.

16. In this affidavit, all funds advanced to Vinco pursuant to the Credit Agreement, plus interest accrued thereon from such date at the applicable rates, together with all applicable costs, expenses and charges, including but not limited to legal and other fees incurred by or on behalf of CIBC pursuant to the Credit Agreement, the Forbearance Agreement and other agreements between the Defendants and CIBC shall be referred to as the "**Loan**".

17. Waterway Houseboats has granted CIBC an unlimited guarantee dated November 29, 2010, to secure Vinco's obligations to CIBC under the Credit Agreement (the "**Guarantee**"). A copy of this Guarantee is attached to this affidavit as **Exhibit "J"**.

SECURITY UNDER THE CREDIT AGREEMENT

18. As is described in the Credit Agreement, the Defendants have also granted CIBC certain security to secure Vinco and Waterway Houseboats' obligations to CIBC under the Credit Agreement and the Guarantee. This security includes:

- (a) a Security Agreement dated November 29, 2010, granting CIBC security in all of Vinco's present and after-acquired personal property and Crown License of Occupation 344093 (the "**Vinco GSA**"), a copy of which is attached to this affidavit as **Exhibit "K"**;
- (b) a Mortgage and Assignment of Rents dated November 29, 2010, granting CIBC security in the amount of \$7,000,000 in the Mervyn Road Property, a copy of which is attached to this affidavit as **Exhibit "L"**;
- (c) a Mortgage of License of Occupation dated November 29, 2010, granting CIBC security in Vinco's interest in Crown License of Occupation 344093, a copy of which is attached to this affidavit as **Exhibit "M"**; and
- (d) a Security Agreement dated November 29, 2010, granting CIBC security in all of Waterway Houseboat's present and after-acquired personal property (the

"Waterway Houseboats GSA"), a copy of which is attached to this affidavit as **Exhibit "N"**.

19. An Assignment and Postponement of Claim in favour of CIBC, dated January 24, 2012, has also been granted by Mr. Vinje. A copy of this Assignment and Postponement of Claim is attached to this affidavit as **Exhibit "O"**.

20. CIBC has registered the Vinco GSA and the Waterway Houseboats GSA in the British Columbia Personal Property Registry (the **"PPR"**), along with certain other registrations against the houseboats and other boats owned by Waterway Houseboats. Searches of the registrations against the Defendants in the PPR, current to May 24, 2019, are attached to this affidavit as **Exhibits "P"** and **"Q"**.

DEFAULTS OF VINCO AND AGREEMENT FOR FORBEAR

21. In late 2018 CIBC became aware that Vinco was in default of its obligations under the Credit Agreement. The defaults that CIBC was aware of included:

- (a) making capital advances without CIBC's prior consent to fund the operation of two other businesses run by Mr. Vinje;
 - (b) failing to maintain an Adjusted Fixed Charge Coverage Ratio of not less than 1.20:1,
 - (c) failing to make certain required payments of interest and bank fees on Credit A, which had caused this facility to become overdrawn;
 - (d) failing to reduce the balance of Credit A to \$1,000,000 as of November 30, 2018; and
 - (e) failing to have a "clean-up" period on Credit A during 2018
- (collectively, the **"Defaults"**).

22. To the best of my knowledge, the Defaults are ongoing.

23. CIBC worked with the Defendants and their various advisors in January and February of 2019 to negotiate and execute the Forbearance Agreement. This agreement was

intended to allow the Defendants additional time to continue to operate their business while seeking solutions to their financial and business difficulties.

24. A copy of the Forbearance Agreement, dated March 1, 2019, is attached to this affidavit as **Exhibit "R"**.

25. Key terms of the Forbearance Agreement include the following:

- (a) the Defendants acknowledged the occurrence of the Defaults;
- (b) the Defendants acknowledged and agreed that the amount owing to CIBC under the Loan was \$8,343,860.81 as of February 28, 2019;
- (c) the Defendants acknowledged that they have no defences to CIBC's claims or rights under or in respect of the Credit Agreement, the Guarantee, or the security granted to CIBC, and agreed that no such defences can or will be raised;
- (d) the Defendants confirmed that the security granted by each of them by CIBC and as described in the Credit Agreement is valid and enforceable and secures their obligations to repay the Loan to CIBC;
- (e) the Defendants covenanted to provide CIBC with information on their attempts to raise capital and cash flow forecasts for their business; and
- (f) CIBC agreed to forbear from realizing on its security as a result of the Defaults until June 30, 2019, unless an event of default under the Forbearance Agreement or a material adverse change in the affairs of the Defendants occurs.

26. The terms of the Forbearance Agreement expressly provided that such agreement did not alter the demand nature of the Loan provided to Vinco under the Credit Agreement.

27. The Defendants also granted CIBC additional security under the Forbearance Agreement. This additional security included:

- (a) a further mortgage on the Mervyn Road Property in the amount of \$3,000,000, for a total of \$10,000,000, a copy of which is attached to this affidavit as **Exhibit "S"**;

- (b) two further mortgages in the amount of \$1,000,000 each on the two additional properties owned by Vinco, copies of which are attached to this affidavit as **Exhibit "T"**; and
- (c) to the extent not already provided for in the security granted pursuant to the Credit Agreement, marine mortgages on the nine houseboats owned by Waterway Houseboats, copies of which are attached to this affidavit as **Exhibit "U"**.

SUBSEQUENT EVENTS

28. The Reasons for Judgment in the Action were released on April 16, 2019 and following the execution of the Forbearance Agreement. The Defendants sought approximately \$10,000,000 in damages in the Action, consisting of out of pocket costs, lost sailings, business losses and diminution of real property value. The Court awarded the Defendants damages in the amount of \$2,054,149. It is unclear when these funds will be received by the Defendants. A copy of the Reasons for Judgment in the Action is attached to this affidavit as **Exhibit "V"**.

29. Appeals have been filed by the Defendants, the District of Sicamous, the Province of British Columbia and the defendant landowners.

30. Since the execution of the Forbearance Agreement, a number of material adverse changes have occurred in the business affairs of the Defendants:

- (a) firstly, as set out above, the damages awarded to the Defendants in the Action were in an amount significantly less than what was claimed and the Defendants informed CIBC they expected to be awarded;
- (b) secondly, the number of upcoming houseboat bookings and expected revenue for the remainder of this year is materially lower than anticipated by the Defendants and contemplated in the cash flow forecasts presented to CIBC; and
- (c) thirdly, as indicated in the cash flow reporting provided to CIBC by Vinco, there is a material shortfall in the cash position of the Defendants anticipated to occur in the coming weeks and months. There is no indication from the Defendants as to how this shortfall will be funded. Copies of these cashflows are attached to this affidavit as **Exhibit "W"**, and copies of the cashflow variance reports for Waterway

Houseboats for the periods ending March 30 and April 27, 2019, are attached as **Exhibit "X"**.

31. CIBC has determined that it can no longer forbear on its right to enforce its security given these material adverse changes. On May 14, 2019, CIBC issued a demand for the full amount outstanding under the Loan. A copy of this demand letter is attached to this affidavit as **Exhibit "Y"**. Enclosed with this demand letter were section 244 notices provided pursuant to the *BIA*, which are also included in **Exhibit "Y"**.


APPOINTMENT OF A RECEIVER

32. CIBC has a contractual right to appoint a receiver under the Vinco GSA and the Waterway GSA, among other agreements. Both the Vinco GSA and the Waterway Houseboats GSA provide for the appointment of a receiver where Vinco or Waterway Houseboats fail to perform their obligations to CIBC under any agreement, including the Credit Agreement and the Guarantee.

33. In October of 2018, Alvarez & Marsal was retained by CIBC to provide financial advice with respect of the Loan and the Defendants' business. CIBC seeks the appointment of Alvarez and Marsal as Receiver over the Defendants. Alvarez & Marsal are familiar with the Defendants' business and assets as they have worked with CIBC, the Defendants and the Defendants' advisors for a number of months.

34. CIBC has given the Defendants many months to secure additional funding and improve their financial position. However, CIBC has lost confidence in the Defendants' ability to successfully continue their business. CIBC now seeks the appointment of the Receiver to protect its security, limit its losses, and prevent further dissipation of the Defendants' assets. CIBC is of the view that the appointment of the Receiver will ensure that realizations on the Defendants' assets are made in a manner that is as fair and in a commercially reasonable manner.


AFFIRMED BEFORE ME at Toronto,
Ontario on 27/May/2019


A Commissioner for taking Affidavits for
Ontario

Caitlin McIntyre


Supriya Sarin

This is **Exhibit "A"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.



A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

Canadian Imperial Bank of Commerce

Commercial Banking
328 Bernard Avenue
Kelowna, BC
V1Y 6N5

December 8, 2011

Vinco Holdings Ltd.
1 – Mervyn Road
Sicamous, B.C.
V0E 2V1

Attention: Neil Millar

Dear Mr. Millar:

We, Canadian Imperial Bank of Commerce ("CIBC"), are pleased to establish the following Credits for you, the Borrower.

Credit A: Demand Revolving Loan

Credit Limit: \$1,750,000

Purpose: To finance normal working capital requirements as required from time to time.

Special

Conditions The following conditions will be applicable to this Credit:

- During the period May 1 – November 30 the Credit Limit will reduce to \$1,000,000.
- A clean-up period will apply to this facility whereby the account will be in a credit balance for at least 5 consecutive days during any calendar year.

*Availment &
Rates:*

A revolving demand credit, for general business purposes, as follows:

Loans are available by way of Overdraft in Canadian dollars at CIBC
Prime plus .75 %

Fees: **Waived**

Credit B: Demand Instalment Loan

Credit Limit: \$3,190,000

Purpose: To refinance existing instalment loans provided by Bank of Montreal.

*Availment &
Rates:*

Loans are available by way of Prime Rate Loans in Canadian dollars and/or Bankers Acceptances. Pricing as follows:

CIBC Prime plus 1.25%

BA's plus 2.70 %

Fixed Rates can be provided under CIBC cost of funds program, subject to availability. (With respect to Fixed Rates, indicative rates can be provided upon request.)

Fees: **Waived**

*Scheduled
Payments:*

Unless we make demand, you will pay CIBC as follows:

Interest payable monthly with monthly principal payments of \$57,000 to be made May 31, June 30, July 31 and August 31 of each year. The loan is to be liquidated no later than September of 2025.

Unless the loan is under a fixed rate pre-payment of all or a portion of the facility is permitted at any time without penalty.

Credit C: Demand Instalment Loan

Credit Limit: \$639,000

Purpose: To finance the extension of a sewer line on property owned by the Borrower.

*Availment &
Rates:*

Loans are available by way of Prime Rate Loans in Canadian dollars and/or Bankers Acceptances. Pricing as follows:

CIBC Prime plus 1.25%

BA's plus 2.70 %

Fixed Rates can be provided under CIBC cost of funds program, subject to availability. (With respect to Fixed Rates, indicative rates can be

provided upon request.)

Fees: **Waived**

*Scheduled
Payments:*

Unless we make demand, you will pay CIBC as follows:

Interest will be payable monthly with monthly principal payments of \$11,500 to be made May 31, June 30, July 31 and August 31 of each year. The loan is to be liquidated no later than September of 2025.

Unless the loan is under a fixed rate pre-payment of all or a portion of the facility is permitted at any time without penalty.

Credit D: Demand Instalment Loan

Credit Limit: \$660,860

Purpose: To finance the extension of the dock facility on property owned by the Borrower.

*Availment &
Rates:*

Loans are available by way of Prime Rate Loans in Canadian dollars and/or Bankers Acceptances. Pricing as follows:

CIBC Prime plus 1.25%

BA's plus 2.70 %

Fixed Rates can be provided under CIBC cost of funds program, subject to availability. (With respect to Fixed Rates, indicative rates can be provided upon request.)

Fees: **Waived**

*Scheduled
Payments:*

Unless we make demand, you will pay CIBC as follows:

Interest will be payable monthly with monthly principal payments of \$11,800 to be made May 31, June 30, July 31 and August 31 of each year. The loan is to be liquidated no later than September of 2025.

Unless the loan is under a fixed rate pre-payment of all or a portion of the facility is permitted at any time without penalty.

Security

The following security is required:

*Security
Agreement:*

✓ All personal property of the business now owned (which includes among other things inventory, equipment and receivables), and all personal property acquired in the future.

*Collateral
Mortgage:*

✓ Collateral mortgage for a minimum amount of \$7,000,000 giving CIBC a first charge over the property owned by the Borrower and located at No. 1 Mervyn Road, Sicamous, B.C. including an assignment of rents and a charge over the foreshore lease.

Special Condition/Provision:

Although a mortgage of \$7,000,000 is being registered, CIBC is not obligated to increase financing beyond the amount established under this Credit Agreement.

Guarantees:

✓ Full liability guarantee provided by Waterway Houseboats Ltd. supported by:

- ✓ • Security Agreement
- ✓ • Fire Insurance loss payable CIBC firstly

Assignment &

Postponement of

Claim:

✓ Assignment and Postponement of Claim provided by John Vinje in an amount that is unlimited.

Insurance:

✓ Evidence of adequate All-Risk insurance with loss payable firstly to the Bank over business assets with loss payable firstly to the Bank.

Covenants

You will ensure that: **Adjusted Fixed Charge Coverage Ratio:** Your Adjusted Fixed Charge Coverage Ratio is not to be less than 1.20:1

This ratio will be tested annually based on the combined income of the Borrower, Waterway Houseboats Ltd. and any related holding company as designated by CIBC. The Adjusted Fixed Charge Coverage Ratio is defined as the ratio of (a) the total of EBITDA less Capital Draws and Dividends to (b) the sum of Current Portion of Long Term Debt, Interest, and Unfunded Capital Expenditures.

There will be no capital withdrawals from either the Borrower or Waterway Houseboats Ltd. without CIBC's prior consent.

No security will be granted by the company to other creditors, shareholders and/or affiliated companies without the Bank's prior consent.

Reporting Requirements

*Reporting
Requirements:*

You will provide:

1. Within 120 days of each fiscal year-end, financial statements for that fiscal year on a review basis.
2. Within 120 days of each fiscal year-end, financial statements from corporate guarantors prepared on a reviewed basis.
3. Internally prepared quarterly financial statements are to be provided for Waterway Houseboats Ltd. within 30 days of the end of the fiscal quarter.
4. A report, prepared by management, detailing pre-bookings for Waterway Houseboats for the following season is to be provided by February 28 annually.
5. Copy of the annual landfill environmental monitoring report from Columbia Shuswap Regional District as per the recommendation of EBA Engineering Consultants.

Other Provisions

Calculations: When applicable, the calculations made under the "Covenants" and "Reporting Requirements" sections of this Agreement are to be done on a consolidated basis.

Interest Rate Applicable to Credit Limit Excesses: Currently 21% per year. If the Credit Limit of a Credit, or the Credit Limit of part of a Credit, or the Overall Credit Limit, is exceeded at any time, the Interest Rate Applicable to Credit Limit Excesses is calculated on that excess amount.

Next Scheduled Review Date: We will review the credit by September 30, 2012. At that time, we will review your financial statements, your forecast business and financial plans, and how well you have complied with the requirements of this Agreement. The terms of this Agreement will continue to apply until either a new Agreement or an Amendment to this one is settled.

Acknowledgement: From time to time, CIBC publishes advertisements or announcements of completed transactions. These advertisements or announcements may take the

form of direct marketing materials, press releases, paid advertisements, project financing signs, internally displayed tombstones, or information displayed on the Internet or on CIBC's Intranet and may include, without limitation, the Borrower's name and logo together with the transaction date and value. The Borrower hereby consents to the publication of an advertisement or announcement of the within transaction.

Standard Credit Terms: The attached Schedule A forms part of this Agreement.

Please indicate your acceptance of these terms by signing below and returning the enclosed copy to our attention no later than December 30, 2011.

Upon acceptance, this Agreement replaces the existing credit agreement dated November 10, 2010, between you and CIBC. Outstanding amounts (and security) under that Agreement will be covered by this Agreement.

Yours truly,

Canadian Imperial Bank of Commerce

by:



Don Prescott
Assistant General Manager
Commercial Banking

Phone: 250-868-5313
Fax: 250-470-1603
E-mail: donald.prescott@cibc.com
Cellular: 250-863-9967

Acknowledgment: The undersigned certifies that all information provided to CIBC is true, and acknowledges receipt of a copy of this Agreement (including any Schedules referred to above).

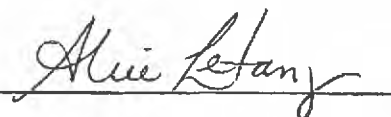
Accepted this 4 day of JANUARY, 2012.

Vinco Holdings Ltd.

By: 

Name: **Neil Millar**

Title: **General Manager**

By: 

Name: **Alice Letang**

Title: **Financial Controller**

**SCHEDULE A - ADDITIONAL DEFINITIONS AND PROVISIONS
FOR DEMAND & TERM FACILITIES**

1. GENERAL

- 1.1 Use of Funds, Returns.** The Borrower will use the Credits only for the purposes specified in this Agreement. The Borrower may not at any time exceed the limit of any Credit, and CIBC may, without notice to the Borrower, return any item that, if paid, would result in the limit of any Credit being exceeded. If, on the other hand, CIBC in its sole discretion elects to pay any such item, the Borrower will pay to CIBC immediately the amount by which the limit of the applicable Credit has been exceeded.
- 1.2 Notice of Failure.** The Borrower will promptly notify CIBC of the occurrence of any failure to perform or observe any of its covenants in this Agreement.
- 1.3 Confidentiality.** The terms of this Agreement are confidential between the Borrower and CIBC, and accordingly the Borrower will not disclose the contents of this Agreement to anyone except its professional advisors.
- 1.4 Applying money received.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, all moneys received by CIBC from the Borrower or from any Security may be applied on such parts of the Borrower's liabilities to CIBC as CIBC may determine.
- 1.5 Right of Set-Off.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, CIBC is authorized at any time to set-off and apply any deposits held by it and any other amounts owed by it to or for the credit of the Borrower against any and all of the obligations of the Borrower with respect to the Credits, irrespective of whether or not CIBC has made any demand and even though any such obligations may not yet be due and payable.
- 1.6 Registration of Security.** The Security will be registered or filed in all jurisdictions and in all offices as CIBC considers necessary or advisable from time to time to create, perfect or protect any Lien created thereby.
- 1.7 Expenses.** The Borrower will reimburse CIBC for all fees and out-of-pocket expenses (including the reasonable fees and expenses of CIBC's solicitors and of any other experts and advisors hired by CIBC) incurred by CIBC in preparing and registering any Security, in responding to requests from the Borrower for waivers, amendments and other matters, in exercising its rights under this Agreement or any Security, and in enforcing any Security.
- 1.8 Further information requirements.** The Borrower will provide such further information about its business and its Subsidiaries as is reasonably requested by CIBC from time to time, and such information shall be in a form acceptable to CIBC.
- 1.9 Consent to release information.** CIBC may from time to time give any credit or other information about the Borrower to, or receive such information from, (i) any financial institution, credit reporting agency, rating agency or credit bureau, (ii) any person, firm or corporation with whom the Borrower may have or proposes to have financial dealings, and (iii) any person, firm or corporation in connection with any dealings the Borrower has or proposes to have with CIBC. The Borrower agrees that CIBC may use that information to establish and maintain the Borrower's relationship with CIBC and to offer any services as permitted by law, including services and products offered by CIBC's Subsidiaries when it is considered that this may be suitable to the Borrower.
- 1.10 Instructions by fax, phone and e-mail.** The Borrower may deliver, and CIBC may accept, instructions by fax, telephone (including cellular phone) and internet e-mail ("Electronic Communication"), according to CIBC-approved procedures, which procedures may be limited to particular types of communications or services. Unless the Borrower expressly indicates otherwise, the Borrower agrees that CIBC may also communicate with the Borrower by e-mail or fax. This may include (i) CIBC sending confidential information to the Borrower, at the Borrower's request; or (ii) the Borrower sending confidential information to CIBC. An Electronic Communication may not be a secure means of communication and the Borrower assumes responsibility for the risks of using Electronic Communications including, without limitation, the possibility that an Electronic Communication is: intercepted by or sent to an unauthorized person, misunderstood, lost, delayed, or not received by CIBC at all. CIBC is entitled to rely upon any Electronic Communication from or purporting to be from the Borrower, as if such instructions were given in writing. However, CIBC may choose not to act upon an Electronic Communication if it believes that the Electronic Communication is unauthorized, incorrect or unclear. CIBC shall not be liable for, and the Borrower will indemnify and save CIBC harmless from, any claims, losses, damages, liabilities and expenses that CIBC incurs (other than those due to CIBC's gross negligence or willful misconduct) including among other things all legal fees and expenses, arising from CIBC acting or declining to act on any of your Electronic Communications given under this Agreement. This indemnity is in addition to any other indemnity or assurance against loss provided by you to CIBC under this Agreement or otherwise.
- 1.11 Further Assurances.** The Borrower will, and will ensure that each of its Subsidiaries will, from time to time promptly upon request by CIBC do and execute all such acts and documents as may be reasonably required by CIBC to give effect to the Credits and the Security, and to any transfer pursuant to section 1.16 of this Schedule.
- 1.12 Insurance.** The Borrower will, and will ensure that each of its Subsidiaries will, keep all its respective assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property and for any other risks CIBC may reasonably require. If CIBC requests, these policies will include a loss payable clause (and with respect to mortgage security, a mortgagee clause) in favour of CIBC. As further security, the Borrower assigns all insurance proceeds to CIBC. The Borrower will provide to CIBC either the policies themselves or adequate evidence of their existence. If any insurance coverage for any reason stops, CIBC may (but shall have no obligation to) insure the property. The Borrower will notify CIBC immediately of any loss or damage to any such asset or property.
- 1.13 Environmental.** The Borrower will, and will ensure that each of its Subsidiaries will, carry on its business, and maintain its assets and property in accordance with all applicable environmental laws and regulations. If there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with the business or property of the Borrower or any of its Subsidiaries, and CIBC pays any fines or for any clean-up suffers any loss or damage as a result of the Discharge, the Borrower will reimburse CIBC, its directors, officers, employees and agents for any and all losses, damages, fines, costs and

other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If CIBC asks, the Borrower will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. The Borrower's obligation under this section continues even after all Credits have been repaid and this Agreement has terminated.

1.14 Related Transactions. None of the Borrower and its Subsidiaries will enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders or with any of its Affiliates, or with any of its or their directors or officers, or enter into, assume or permit to exist any employment, consulting or analogous agreement or arrangement with any such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower or such Subsidiary and which is upon fair and reasonable terms not less favourable to the Borrower or its applicable Subsidiary than it would obtain in a comparable arms-length transaction.

1.15 Waiver. No delay on the part of CIBC in exercising any right or privilege will operate as a waiver thereof, and no waiver of any failure or default will operate as a waiver thereof unless made in writing and signed by an authorized officer of CIBC, or will be applicable to any other failure or default.

1.16 Assignment. CIBC may assign, sell or participate (herein referred to as a "transfer") all or any part of its rights and obligations under all or any of the Credits to any third party, and the Borrower agrees to sign any documents and take any actions that CIBC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under this Agreement as if it were a party to it, with respect to all rights and obligations included in the transfer. The Borrower may not assign any of its rights or obligations under any of the Credits.

1.17 Authorized Debits. The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.

1.18 Communications. Any communication or notice to be given with respect to the Credits may be effectively given by delivering the same at the addresses set out on the signature page of this Agreement, or by sending the same by facsimile or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.

1.19 Governing Law. This Agreement shall be governed by the laws of British Columbia, and the Borrower submits itself to the jurisdiction of any competent federal or provincial court in such jurisdiction.

1.20 Certain Definitions. In this Agreement the following terms have the following meanings:

"Affiliate" means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means the attached letter agreement between CIBC and the Borrower, including this Schedule and any other Schedules thereto, as the same may be amended or supplemented from time to time.

"Business Day" means (i) with respect to any amount denominated in Canadian dollars and all matters pertaining thereto, any day excluding Saturday, Sunday and any day which is a legal holiday in Toronto [or Montreal], Canada, and (ii) with respect to any amount denominated in US dollars and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in New York, U.S.A., [or] Toronto [or Montreal], Canada.

"Compliance Certificate" means an Officer's Certificate in the form prescribed by CIBC and stating, as of the applicable date, (i) that the Borrower is not in default of the observance or performance of any of its covenants in this Agreement (or describing any default then existing), (ii) that all representations and warranties contained in this Agreement are true and accurate as if made on and as of such date (or describing any thereof that are not then true and accurate), (iii) the particulars and calculation of all financial covenants of the Borrower contained in this Agreement.

"Event of Default" means any of the following events or circumstances:

- (i) if the Borrower fails to pay any amount when due and payable hereunder;
- (ii) if the Borrower defaults in the performance or observance of any negative covenant contained herein, or of any other term or covenant contained herein if such other default continues for 30 days or more;
- (iii) if any representation or warranty contained in this Agreement or the Security or in any certificate delivered to CIBC by or on behalf of the Borrower is untrue in any material respect on the date as of which it was made;
- (iv) if an aggregate amount exceeding nil owed by the Borrower or its Subsidiaries is not paid when due or the maturity thereof is accelerated;
- (v) if any obligation of the Borrower and its Subsidiaries to CIBC is or becomes unenforceable or if the enforceability thereof is disputed, or if any of the Security ceases to constitute a Lien of the nature and priority contemplated by this Agreement;
- (vi) if any of the Borrower and its Subsidiaries commits an act of bankruptcy under the Bankruptcy and Insolvency Act (Canada), or if any insolvency proceeding or proceeding for its winding up, liquidation or dissolution is commenced by or against any of them and is not being contested in good faith, or publicly announces or admits in writing its inability to pay its debts generally as they become due, or suspends or threatens to suspend transaction of all or any substantial part of its usual business, or any action is taken by any of the Borrower and its Subsidiaries or any shareholder of any of them in furtherance of any of the foregoing;

(vii) if an encumbrancer (including without limitation an execution creditor) takes possession of any property of any of the Borrower and its Subsidiaries which in the opinion of CIBC is material;

(viii) if there exists for three Business Days any final judgement of a court of competent jurisdiction against any of the Borrower and its Subsidiaries which has not been satisfied in full (exclusive of any amount adequately covered by insurance);

(ix) if in the reasonable opinion of CIBC there has occurred any event which has had a Material Adverse Effect; or

(x) if there is any change in the effective control of the Borrower, as determined by CIBC.

"GAAP" means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants. If the Borrower, or the party to which references to GAAP are intended to apply, has adopted International Financial Reporting Standards ("IFRS"), then the applicable references in this Agreement to GAAP or Generally Accepted Accounting Principles may be interpreted to mean IFRS, but only if CIBC has consented to such change.

"Inventory Value" means, at any time, the inventory of the Borrower and its Subsidiaries (which shall not include any work-in-process for the purpose of this definition) then existing, less any inventory that (i) is not located in Canada, (ii) is not subject to the applicable duly perfected Liens created by the Security, (iii) is subject to any Lien other than as specifically permitted by CIBC, (iv) is located in or on leased premises unless the applicable lessor has waived all Liens that may at any time be held by such lessor in respect of any inventory, (v) is obsolete or not readily saleable in the ordinary course of business, all valued at the lower of cost and market on a first-in, first-out basis, (vi) that has not been paid for in full and is subject to a right of repossession by the seller thereof, or (vii) that is otherwise excluded by CIBC in its reasonable discretion.

"Investment" means, with respect to any person, any direct or indirect investment in or purchase or other acquisition of the securities of or any equity interest in any other person, any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to, any other person, or any purchase or other acquisition of all or substantially all of the property of any other person.

"Lien" includes without limitation a mortgage, hypothec, whether legal or conventional lien, Prior Ranking Claims, security interest, prior claim, charge or encumbrance of any sort on any property or asset, and includes conditional sales contracts, title retention agreements, capital trusts, capital leases and leasing.

"Material Adverse Effect" means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of any of the Borrower and its Subsidiaries to perform its obligations under any of this Agreement and the Security to which it is a party.

"Monthly Statement of Available Credit" means an Officer's Certificate stating, the amount and particulars of calculation of Receivable Value, Inventory Value (if applicable) and Prior Ranking Claims, and the resulting maximum available amount and undrawn amount of the Demand Operating Credit, as of a specified date.

"Normal Course Lien" means, at any time, the following:

(i) Liens for taxes and other undetermined or inchoate Liens arising in the ordinary course of business which relate to amounts not overdue or a claim for which has not been filed or registered pursuant to applicable law;

(ii) easements, rights-of-way, restrictions and other similar encumbrances arising in the ordinary course of business which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value or use of the property subject thereto;

(iii) Liens created by the Security and other Liens consented to in writing by CIBC;

"Officer's Certificate" means a certificate, in form satisfactory to CIBC, signed by a senior officer of the Borrower.

"Operating Account" means any Canadian dollar or US dollar account of the Borrower with CIBC as is selected by CIBC from time to time for the purposes hereof.

"Prior Ranking Claims" means, at any time, any liability of any of the Borrower and its Subsidiaries that ranks, in right of payment in any circumstances, equal to or in priority to any liability of the Borrower or such Subsidiary to CIBC, and may include unpaid wages, salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, unpaid taxes, amounts owed in respect of worker's compensation, amounts owed to unpaid vendors who have a right of repossession, and amounts owing to creditors which may claim priority by statute or under a Purchase Money Lien.

"Purchase Money Lien" means any Lien which secures a Purchase Money Obligation permitted by this Agreement, provided that such Lien is created not later than 30 days after such Purchase Money Obligation is incurred and does not affect any asset other than the asset financed by such Purchase Money Obligation.

"Purchase Money Obligation" means any Debt (including without limitation a capitalized lease obligation) incurred or assumed to finance all or any part of the acquisition price (and not exceeding the fair market value) of any asset acquired by any of the Borrower and its Subsidiaries.

"Receivable Value" means, at any time, the receivables of the Borrower and its Subsidiaries then existing, less any receivable that (i) is not then subject to the applicable duly perfected Liens created by the Security, (ii) is subject to any Lien other than as specifically permitted by CIBC, (iii) is payable more than 30 days after the date of shipment of the inventory or the provision of the service that created such receivable, (iv) has been outstanding for 90 days or more, (v) is subject to any offset or counterclaim by the applicable account debtor, (vi) is owed by any person whose principal place of business is located outside Canada or the United States of America, (vii) is payable in a currency other than Canadian or U.S. dollars, (viii) is owed by an Affiliate of the Borrower or any employee, agent or representative of the Borrower or of any such Affiliate, (ix) with respect to which a cheque, note, draft or other payment instrument has not been honoured in accordance with its terms, or (x) has been specifically identified by CIBC as an excluded receivable for the purpose hereof or is owed by any person that is insolvent or is otherwise doubtful of collection in the reasonable opinion of CIBC.

"Security" means, collectively, all of the items of security held by CIBC for the indebtedness and liabilities, or any part thereof, of the Borrower to CIBC.

"Subsidiary" of any person means any other person of which shares or other equity units having ordinary voting power to elect a majority of the board of directors or other individuals performing comparable functions, or which are entitled to or represent more than 50% of the owners' equity or capital or entitlement to profits, are owned beneficially or controlled, directly or indirectly, by any one or more of such first person and the Subsidiaries of such first person, and shall include any other person in like relationship to a Subsidiary of such first person.

2. INTEREST RATES; PAYMENTS; CALCULATIONS

2.1 **Variable interest.** Each variable interest rate provided for in this Agreement will change automatically, without notice, whenever the Prime Rate or the US Base Rate, as the case may be, changes.

2.2 **Payment of interest.** Interest is calculated on the applicable balance at the end of each day. Interest is payable in arrears once a month on the day required by CIBC, unless otherwise specified in this Agreement, and interest on amounts in default is payable on demand.

2.3 **Interest Rate Applicable to Credit Limit Excesses.** The Interest Rate Applicable to Credit Limit Excesses will be charged on the amount outstanding under a Credit that exceeds the limit of such Credit, and if there are several parts of a Credit, the Interest Rate Applicable to Credit Limit Excesses will be charged if the limit of a particular part is exceeded. To determine if the limit of a Credit has been exceeded, any amount in a currency other than the currency in which the limit is designated will be converted into that currency, as described in section 2.10 of this Schedule.

2.4 **Interest on Overdue Amounts.** Except as otherwise specified herein, if any principal is not paid when due, such overdue principal will bear interest (as well after as before judgement), payable on demand, at the interest rate applicable to such principal prior to default, and interest will be payable on overdue interest (as well after as before judgement) at the same rate as is applicable to the related principal. If any amount is not paid by the Borrower when due and there is no interest otherwise applicable to such amount specified herein, such overdue amount will bear interest (as well after as before judgement), payable on demand, at a rate per annum equal at all times to the Prime Rate plus 5% (in the case of any such amount payable in Canadian dollars) or the US Base Rate plus 5% (in the case of any such amount payable in US dollars) from the date of non-payment until paid in full.

2.5 **Reductions of Limit of Credits.** On or prior to each date on which the limit of any Credit is reduced, the Borrower will repay such outstanding amounts thereunder, if any, as are necessary so that, after giving effect to the repayment, the total of all amounts outstanding under such Credit does not exceed the limit as so reduced.

2.6 **Payments.** If any payment is due on a day other than a Business Day, such payment will be due on the next Business Day.

2.7 **CIBC's pricing policy.** The fees, interest rates and other charges for the Borrower's banking arrangements with CIBC are dependent upon each other. Accordingly, if the Borrower cancels or does not follow through with, in the manner originally contemplated, any of these arrangements, CIBC reserves the right to require payment by the Borrower of increased or added fees, interest rates and charges as a condition of the continuation of the Borrower's banking arrangements.

2.8 **Calculations.** The following terms apply to all calculations under the Credits:

(a) CDOR, Federal Funds Rate, Prime Rate and US Base Rate shall be determined by CIBC if and whenever such determination is required for the purpose of this Agreement, and such determination by CIBC shall be conclusive evidence of such rate.

(b) All interest and fees hereunder shall be computed on the basis of the actual number of days elapsed divided by 365. Any such applicable interest rate, expressed as an annual rate of interest for the purpose of the *Interest Act* (Canada), shall be equivalent to such applicable interest rate multiplied by the actual number of days in the calendar year in which the same is to be determined and divided by 365.

(c) In calculating interest or fees payable hereunder for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

2.9 **CIBC's Records.** CIBC's loan accounting records will provide conclusive evidence of all terms and conditions of the Credits such as principal loan balances, interest calculations, and payment dates.

2.10 **Foreign Currency Conversion.** If it is necessary for any purpose relating to the Credits that an amount denominated in a currency other than Canadian dollars be expressed in or equated to an amount of Canadian dollars (such as, for example, to determine whether amounts denominated in US dollars that are outstanding under a Credit which has a limit specified in Canadian dollars exceed the limit of such Credit so as to make applicable the Interest Rate Applicable to Credit Limit Excesses), the applicable amount of Canadian dollars shall be determined by CIBC in accordance with its normal practice.

2.11 **Deemed Re-Investment Principle.** For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

2.12 **Certain Definitions.** If and whenever required for the purpose of this Agreement, the following terms have the following definitions:

"CDOR" means, for any day, the average of the annual discount rates for bankers' acceptances denominated in Canadian dollars of certain banks named in Schedule 1 to the *Bank Act* (Canada) for a specified term that appears on the CDOR page of the Reuters Screen as of 10:00 a.m. on such day (or, if such day is not a Business Day, as of 10:00 a.m. on the next preceding Business Day).

"Federal Funds Rate" means, for any day, an annual interest rate equal to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day in New York,

for the next preceding business day in New York) by the Federal Reserve Bank of New York, or for any such business day on which such rate is not so published, the arithmetic average of the quotations for such day on such transactions received by CIBC from three United States federal funds brokers of recognized standing selected by it.

"Interest Rate Applicable to Credit Limit Excesses" means the annual interest rate generally established by CIBC from time to time for the purpose of calculating interest on overdrafts in accounts maintained with CIBC in Canada.

"Prime Rate" means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in Canadian dollars made in Canada and (ii) 1% per annum above the CDOR for 30-day bankers' acceptances from time to time.

"US Base Rate" means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in US dollars made in Canada, and (ii) 1% per annum above the Federal Funds Rate from time to time.

3. NOTICE OF BORROWING; NOTICE OF REPAYMENT; OVERDRAFTS

3.1 **Notice of Borrowing.** Whenever the Borrower desires to obtain any amount under a Credit (other than a loan by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice (a "Notice of Borrowing") specifying the Credit under which such amount is to be obtained and the particulars of such amount including the Business Day on which such amount is to be obtained. A notice requesting any loan in an amount exceeding \$10,000,000 or US \$10,000,000 must be given not later than 10:00 a.m. on the Business Day preceding the applicable borrowing date.

3.2 **Notice of Repayment.** Whenever the Borrower desires to make any repayment or repayments under one or more of the Credits in an aggregate amount exceeding \$10,000,000 (or an equivalent amount in any other currency) on any day, it will give to CIBC irrevocable written notice specifying the particulars of such repayment not later than 10:00 a.m. on the Business Day preceding the applicable repayment date.

3.3 **Overdrafts.** If the Borrower is entitled under any Credit to obtain loans in Canadian dollars or US dollars by way of overdraft, the debit balance in the Borrower's applicable Operating Account from time to time will be deemed to be a loan in Canadian dollars or US dollars, as the case may be, outstanding to the Borrower under such Credit and bearing interest as set out in this Agreement for loans in such currency under such Credit. If at any time the Borrower is a party to a cash concentration arrangement with CIBC, the amount of any overdraft from time to time in the Canadian dollar or US dollar concentration account of the Borrower established pursuant to such arrangement will also be deemed to be a loan in Canadian dollars or US dollars, as applicable, outstanding to the Borrower under the applicable Credit and bearing interest as set out above on the basis of the Prime Rate or the US Base Rate, as the case may be.

4. INDEMNITIES

4.1 **Reserve Indemnity.** If subsequent to the date of this Agreement any change in or introduction of any applicable law, or compliance by CIBC with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject CIBC to any tax with respect to the Credits or change the basis of taxation of payments to CIBC of any amount payable under the Credits (except for changes in the rate of tax on the overall net income of CIBC), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Credits, or impose on CIBC any other condition or restriction, and the result of any of the foregoing is to increase the cost to CIBC of making or maintaining the Credits or any amount thereunder or to reduce any amount otherwise received by CIBC under the Credits, CIBC will promptly notify the Borrower of such event and the Borrower will pay to CIBC such additional amount calculated by CIBC as is necessary to compensate CIBC for such additional cost or reduced amount received. A certificate of CIBC as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

4.2 **Currency Indemnity.** Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the "proper currency") made to or for the account of CIBC in a currency (the "other currency") other than the proper currency, whether pursuant to a judgement or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower's obligation only to the extent of the amount of the proper currency which CIBC is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which CIBC is able to purchase is less than the amount of the proper currency due to CIBC, the Borrower shall indemnify and save CIBC harmless from and against any loss or damage arising as a result of such deficiency.

4.3 **Default Indemnity.** The Borrower shall indemnify and save harmless CIBC from all claims, demands, liabilities, damages, losses, costs, charges and expenses, including any loss or expense arising from interest or fees payable by CIBC to lenders of funds obtained by it in order to make or maintain any amount under the Credits and any loss or expense incurred in liquidating or re-employing deposits from which such funds were obtained, which may be incurred by CIBC as a consequence of (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to any of the Credits, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of CIBC as to any such loss or expense and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

5. CONDITIONS PRECEDENT

5.1 Conditions Precedent to the Initial Amount

CIBC shall not be obliged to make available the initial amount under any Credit unless it shall have received (a) all required Security, which shall have been duly registered and filed as required hereby, (b) such financial and other information relating to the Borrower and its Subsidiaries, and any guarantor, as CIBC shall have reasonably requested, (c) confirmation of all insurance maintained by the Borrower and its Subsidiaries, and such insurance shall comply with the requirements of this Agreement, (d) payment of all fees and other amounts which shall have become due and payable by the Borrower to CIBC on or prior to the initial borrowing date, and (e) the following documents in form, substance and execution acceptable to CIBC: (i) a certified copy of the constituting documents and by-laws of each of the Borrower and its Subsidiaries, and of each corporate guarantor, and of all corporate proceedings taken and required to be taken by each of them to authorize the

execution and delivery of such of this Agreement and the Security to which it is a party and the performance of the transactions by it contemplated therein; (ii) a certificate of incumbency for each of the Borrower and its Subsidiaries, and for each corporate guarantor, setting forth specimen signatures of the persons authorized to execute such of this Agreement and the Security to which it is a party; (iii) such legal opinions addressed to CIBC relative to the Borrower, this Agreement and the Security as CIBC may require; and (iv) such other documents relative to this Agreement and the transactions contemplated herein as CIBC may reasonably require.

5.2 Conditions Precedent to All Amounts

CIBC shall not be obliged to make available any amount under any Credit unless (a) CIBC shall have received any applicable Notice of Borrowing, (b) on the applicable borrowing date the Borrower shall not have failed to observe or perform any of its covenants in this Agreement, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (c) the representations and warranties contained in this Agreement shall be true on and as of the applicable borrowing date with the same effect as if such representations and warranties had been made on and as of the applicable borrowing date, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (d) all other conditions specified herein, to the extent not previously satisfied for any reason, other shall have been satisfied, and (e) in respect of any amount that would result in the aggregate amount outstanding under the Credits being increased, there shall not have occurred subsequent to the date of last annual financial statements of the Borrower, in the opinion of CIBC, any event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

6 REPRESENTATIONS AND WARRANTIES

6.1 **Representations and Warranties.** To induce CIBC to establish and maintain each Credit, the Borrower represents and warrants as follows:

(a) Each of the Borrower and its Subsidiaries has all necessary power and authority to own its property, to carry on the business carried on by it, to enter into and perform its obligations under such of this Agreement and the Security to which it is a party.

(b) This Agreement, and upon delivery thereof the Security, have been duly executed and delivered by each of the Borrower and its Subsidiaries as are parties thereto, and constitute the legal, valid and binding obligation of each of them enforceable in accordance with their terms.

(c) The execution and delivery by the Borrower and its Subsidiaries of this Agreement and the Security and the performance by them of their obligations thereunder, and the obtaining by the Borrower of amounts under the Credits, will not conflict with or result in a breach of any applicable law, and will not conflict with or result in a breach of or constitute a default under any of the provisions of its constituting documents or by-laws or any agreement or restriction to which it is a party or by which it is bound.

(d) The Borrower has delivered to CIBC a true and complete copy of its most recent financial statements, and such financial statements present fairly the financial position of the Borrower, in accordance with GAAP, as of the date thereof and for the fiscal period then ended. All financial statements of the Borrower delivered by the Borrower to CIBC after the date of this Agreement will present fairly the financial position of the Borrower, in accordance with GAAP, as of the dates thereof and for the fiscal periods then ended.

(e) Since the date of the most recent financial statements of the Borrower delivered to CIBC, there has occurred no event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

(f) The Borrower has not failed to observe or perform (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement.

(g) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph, to the best knowledge of the Borrower, (i) the business carried on and the property owned or used at any time by any of the Borrower and its Subsidiaries and their respective predecessors have at all times been carried on, owned or used in compliance with all environmental laws; (ii) there are no circumstances that could reasonably be expected to give rise to any civil or criminal proceedings or liability regarding the release from or presence of any hazardous substance on any lands used in or related to the business or property of any of the Borrower and its Subsidiaries (iii) there are no proceedings and there are no circumstances or material facts which could give rise to any proceeding in which it is or could be alleged that any of the Borrower and its Subsidiaries is responsible for any domestic or foreign clean up or remediation of lands contaminated by hazardous substances or for any other remedial or corrective action under any environmental laws; and (iv) each of the Borrower and its Subsidiaries has maintained all environmental and operating documents and records relating to its business and property in the manner and for the time periods required by any environmental laws and has never had conducted an environmental audit of its business or property(h) No representation or warranty made by the Borrower herein or in any other document furnished to CIBC from time to time contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All projections and *pro forma* information delivered to CIBC from time to time by the Borrower were prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time of delivery.

6.2 **Survival.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the obtaining of amounts under any Credit, and the delivery of each Notice of Borrowing and the obtaining of any amount under any Credit shall constitute a reaffirmation on and as of such delivery date and such borrowing date, in each case by reference to the then-existing facts and circumstances, of all representations and warranties contained in this Agreement.

7. FINANCIAL COVENANTS

7.1 **Calculation.** All financial covenants will be calculated including the Borrower and its Subsidiaries on a consolidated basis (or, if agreed upon by CIBC in its sole discretion, including the Borrower but excluding its Subsidiaries on an unconsolidated basis), and each amount derived from the Borrower's profit and loss statement shall be calculated as the total of such amount during the Borrower's four most recently-completed fiscal quarters (or, if agreed upon by CIBC in its sole discretion, during the Borrower's most recently-completed fiscal year), as shown in the Borrower's most recent financial statements delivered to CIBC.

7.2 **Certain Definitions.** In this Agreement the following terms have the following meanings:

"Adjusted Debt Service Ratio" means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt, to (b) Debt Service Requirements.

"Adjusted Fixed Charge Coverage Ratio" means, for any period, the ratio of (a) the sum of (i) EBITDA for such period, (ii) all management bonuses and similar payments deducted in the calculation of such EBITDA but not paid out during such period (and with respect to which the entitlement to receive payment thereof has been postponed in a manner satisfactory to CIBC) and (iii) all management bonuses and similar payments deducted in the calculation of such EBITDA and paid out during such period, and which have then been loaned back to the Borrower during such period by way of Postponed Debt to (b) the sum of (i) Debt Service Requirements for such period, [and] (ii) cash income taxes for such period [and (iii) Unfunded Capital Expenditures for such period] [and (iii) capital expenditures for such period].

"Current Assets" means assets that would be shown as current assets on the balance sheet prepared in accordance with GAAP, less all amounts due from Affiliates.

"Current Liabilities" means liabilities that would be shown as current liabilities on a balance sheet prepared in accordance with GAAP.

"Current Ratio" means the ratio of Current Assets to Current Liabilities.

"Debt" means, with respect to any person, (i) an obligation of such person for borrowed money, (ii) an obligation of such person evidenced by a note, bond, debenture or other similar instrument, (iii) an obligation of such person for the deferred purchase price of property or services, excluding trade payables and other accrued current liabilities incurred in the ordinary course of business in accordance with customary commercial terms, (iv) a capitalized lease obligation of such person, (v) a guarantee, indemnity, or financial support obligation of such person, determined in accordance with GAAP, (vi) an obligation of such person or of any other person secured by a Lien on any property of such person, even though such person has not otherwise assumed or become liable for the payment of such obligation, or (vii) an obligation arising in connection with an acceptance facility or letter of credit issued for the account of such person.

"Debt Service Requirements" means, for any periods (i) all principal payments in respect of Debt made or required to be made during such period, (ii) Interest Expense for such period, and (iii) all dividends paid during such period on all preferred shares of the Borrower.

"EBIT" means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense and income taxes.

"EBITDA" means, for any period, Net Income for such period plus all amounts deducted in the calculation thereof on account of Interest Expense, income taxes, depreciation and amortization.

"Effective Tangible Net Worth" means the sum of (i) Shareholders' Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible, and (ii) Postponed Debt.

"Intangible" includes without limitation such personal property as goodwill; copyrights, patents and trademarks; franchises; licences, leases; research and development costs; and deferred development costs.

"Interest Coverage Ratio" means the ratio of EBIT to Interest Expense calculated on a consolidated basis.

"Interest Expense" means, for any period the aggregate amount accrued (whether or not payable or paid) during such period in accordance with GAAP on account of (i) interest expense including amortization of Debt discount and Debt issuance costs, capitalized interest, standby fees, commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances and (ii) the interest expense components of all capitalized lease obligations.

"Net Income" means, for any period, the net income (loss) for such period, calculated in accordance with GAAP [before unusual and extraordinary items] [but excluding (i) the income (or loss) of any person accrued prior to the date it becomes a Subsidiary of the Borrower or is amalgamated with or consolidated into the Borrower or into any of its Subsidiaries or such person's property is acquired by the Borrower or any of its Subsidiaries, and (ii) any after-tax gains (but not pre-tax losses) attributable to dispositions of property out of the ordinary course of business].

"Postponed Debt" means any Debt for borrowed money that is incurred at such time as no failure by the Borrower to perform or observe any of its covenants in this Agreement is continuing or would be created by the incurrence thereof (to be evidenced by *pro forma* financial statements delivered to CIBC) and which has the following attributes: (i) no principal thereof is repayable so long as any amount is owed by the Borrower to CIBC (or until such earlier date as CIBC may agree upon in writing), (ii) no covenant with respect to such Debt is more onerous than or in addition to the covenants specified herein, and (iii) all rights of the holder of such Debt are postponed and subordinated to all rights of CIBC under or in respect of the Credits pursuant to a subordination agreement satisfactory in form and substance to CIBC.

"Senior Debt" means all Debt less all Postponed Debt.

"Senior Debt to EBITDA Ratio" means the ratio of Senior Debt to EBITDA.

"Shareholders' Equity" means, at any time, the amount which would, in accordance with GAAP, then be included as shareholders' equity on a balance sheet.

"Tangible Net Worth" means the sum of Shareholders' Equity less any amount that would be included on a balance sheet prepared in accordance with GAAP as an Investment in or as amounts owed by any Affiliate or as an Intangible.

"Total Liabilities" means, all Debt and other liabilities.

"Total Liabilities less Postponed Debt to Effective Tangible Net Worth Ratio" means the ratio of Total Liabilities, less all Postponed Debt, to Effective Tangible Net Worth.

"Unfunded Capital Expenditures" means capital expenditures that are not specifically financed with long term Debt.

"Working Capital" means the excess of Current Assets over Current Liabilities.

8. BANKERS' ACCEPTANCES

8.1 **Power of Attorney.** To facilitate the issuance of Bankers' Acceptances under the Credits, the Borrower appoints CIBC to execute, endorse and deliver on behalf of the Borrower drafts in the form or forms prescribed by CIBC for bankers' acceptances denominated in Canadian dollars (each such executed draft which has not yet been accepted by CIBC is referred to herein as a "Draft"). Each Bankers' Acceptance executed and delivered by CIBC on behalf of the Borrower as provided herein shall be binding upon the Borrower as if it had been executed and delivered by a duly authorized officer or officers of the Borrower.

8.2 **Drafts.** Notwithstanding the above section, the Borrower will from time to time provide to CIBC if so required by CIBC an appropriate number of Drafts drawn by the Borrower upon CIBC and payable and endorsed as specified by CIBC. The dates, maturity dates and face amounts of all Drafts delivered by the Borrower shall be left blank, to be completed by CIBC as required. All such Drafts shall be held by CIBC subject to the same degree of care as if they were such Lender's own property. CIBC will, upon written request by the Borrower, advise the Borrower of the number and designations, if any, of the Drafts of the Borrower then held by it. CIBC shall not be liable for its failure to accept a Draft as required hereby if the cause of such failure is, in whole or in part, due to the failure of the Borrower to provide appropriate Drafts to CIBC on a timely basis.

8.3 **Term and Amount.** The term of all Bankers' Acceptances issued pursuant to any Notice of Borrowing must be identical. Each Bankers' Acceptance shall be in a face amount of \$100,000 or any whole multiple thereof, and the aggregate face amount of Bankers' Acceptances issued pursuant to any Notice of Borrowing must not be less than \$1,000,000. Each Bankers' Acceptance will be dated the date on which it is issued, and will be for a term of one, two, three or six months or such other period as may be agreed to by CIBC.

8.4 **Calculation of Fee.** The fee for any Bankers' Acceptance will be calculated, at the rate specified, on the basis of the face amount and term of such Bankers' Acceptance.

8.5 **Payment of Fee.** Upon acceptance of a Draft the Borrower will pay to CIBC the related fee specified in this Agreement, and to facilitate payment CIBC will be entitled to deduct and retain for its own account the amount of such fee from the amount to be paid by CIBC to the Borrower as the purchase price for the resulting Bankers' Acceptance.

8.6 **Purchase by CIBC.** Each Bankers' Acceptance will be purchased by CIBC for a price which produces a yield thereon equal to the Bankers' Acceptance Yield then in effect. Such price will be credited by CIBC to the applicable Operating Account.

8.7 **No Market.** If CIBC determines in good faith, which determination will be conclusive and binding on the Borrower, and so notifies the Borrower, that there does not exist at the applicable time a normal market in Canada for the purchase and sale of bankers' acceptances, then notwithstanding any other provision hereof any obligation of CIBC to purchase Bankers' Acceptances will be suspended until CIBC determines that such market does exist and gives notice thereof to the Borrower, and any Notice of Borrowing requesting Bankers' Acceptances will be deemed to be a Notice of Borrowing requesting Loans in Canadian dollars in a similar aggregate principal amount.

8.8 **Payment on Maturity.** On the maturity of each Bankers' Acceptance the Borrower will pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount of such Bankers' Acceptance. The obligation of the Borrower to make such payment is absolute and unconditional, and will not be prejudiced by the fact that the holder of any such Bankers' Acceptance is CIBC. No days of grace may be claimed by the Borrower for the payment at maturity of any Bankers' Acceptance. If the Borrower does not make such payment, the amount of such payment shall be deemed to be a loan in Canadian dollars made to the Borrower by CIBC and payable on demand. The Borrower hereby confirms the application of the proceeds of such loan in payment of the liability of the Borrower with respect to the related Bankers' Acceptance.

8.9 **Cash Collateralization.** If any Bankers' Acceptance is outstanding at any time that an Event of Default occurs, the Borrower will forthwith upon demand by CIBC pay to CIBC, for the account of the holder of such Bankers' Acceptance, Canadian dollars in an amount equal to the face amount thereof. Such funds shall be held by CIBC for payment of the liability of the Borrower in respect of such Bankers' Acceptance on the maturity thereof.

8.10 **Signatures on Drafts.** The signature of any duly authorized officer of the Borrower on a Draft may be mechanically reproduced in facsimile, and all Drafts bearing such facsimile signature shall be binding upon the Borrower as if they had been manually signed by such officer, notwithstanding that such person whose manual or facsimile signature appears on such Draft may no longer hold office at the date thereof or at the date of acceptance of such Draft by CIBC or at any time thereafter.

8.11 **Undisbursed Credit.** For the purpose of calculating the undisbursed amount of any Credit and for any other relevant provision of this Agreement, the amount constituted by any Bankers' Acceptance shall be the face amount thereof.

8.12 **Certain Definitions.** In this Agreement the following terms shall have the following meanings:

"Bankers' Acceptance" or "B/A" means a Draft which has been accepted by CIBC pursuant to a Credit.

"Bankers Acceptance Yield" means, with respect to any Bankers' Acceptance to be purchased by CIBC at any time, the annual yield resulting from the price at which CIBC is offering to purchase at such time bankers' acceptances accepted by it having a term identical to such Bankers' Acceptance and in a comparable face amount to the Bankers' Acceptances to be purchased by CIBC from the Borrower at such time.

"face amount" means, with respect to any Bankers' Acceptance, the principal amount thereof payable on the maturity thereof.

9. LETTERS OF CREDIT AND ACCEPTANCES

The following terms apply to each Letter of Credit issued by CIBC for the Borrower whether issued under any Credit or otherwise.

9.1 **Reimbursement, Payment or Prepayment.** The Borrower agrees, forthwith upon demand by CIBC, to provide CIBC with cash in the proper currency to meet each drawing that CIBC is required to pay under an L/C or to reimburse CIBC for each drawing that CIBC has paid under an L/C. If we demand payment of any Credit under which a Letter of Credit is outstanding, or if the Borrower elects to permanently repay or terminate any Credit under which a Letter of Credit is outstanding, the Borrower must provide CIBC with cash, in the same currency as the L/C, or marketable securities satisfactory to us (collectively the "Cash Collateral") in an amount equal to CIBC's maximum potential liability under the L/C. The Cash Collateral will be held by us as security for, and may be applied to satisfy obligations under the L/C or otherwise under any Credit. We shall release any Cash Collateral that is no longer required for such purposes.

9.2 Neither CIBC nor any of its correspondents shall be liable for the use which may be made with respect to any L/C; any acts or omissions of the beneficiary of any L/C including the application of any payment made to such beneficiary; the form, validity, sufficiency, correctness, genuineness or legal effect of any document relating to any L/C, even if such document should prove to be in any respect invalid, insufficient, inaccurate, fraudulent or forged; any failure of the beneficiary of any L/C to meet the obligations of such beneficiary to the Borrower or to any other person; or any failure by CIBC to make payment under any L/C as a result of any law, control or restriction rightfully or wrongfully exercised or imposed by any domestic or foreign court or government or governmental authority or as a result of any other cause beyond the control of CIBC. The obligations of the Borrower under this Clause 9 are absolute and unconditional under all circumstances including without limitation any matter referred to above.

9.3 **Indemnity.** The Borrower hereby indemnifies and agrees to hold CIBC harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which CIBC may incur, sustain or suffer, other than as a result of its own negligence or wilful misconduct, as a result of issuing or amending an L/C, including legal and other expenses incurred by CIBC in any action to compel payment by CIBC under an L/C or to restrain CIBC from making payment under an L/C. Any amounts due under this indemnity shall form part of the Debt.

9.4 **L/C Fees.** Unless the Borrower has made other arrangements with us, we will automatically debit the operating account of the Borrower for all fees payable with respect to L/Cs. Any Overdraft in the operating account in excess of any Credit Limit attached to the operating account will bear interest at the Excess Interest Rate.

9.5 **Standard Agreements.** The terms and conditions of our standard Application for Irrevocable Documentary Credit or Application for Standby Letter of Credit, as applicable, and any of our other standard documentation relating to L/C's, in effect from time to time will be applicable to each L/C whether or not any such Application or other documentation has been executed by or on behalf of the Borrower. A copy of any such Application or other documentation is available from CIBC.

9.6 Unless otherwise specified in the applicable Application or other documentation referred to above, and subject to any provision herein to the contrary, each L/C shall be subject to the Uniform Customs and Practice for Documentary Credits or the International Standby Practices, as applicable, of the International Chamber of Commerce current at the time of issuance of such L/C.

9.7 **Cash Collateralization.** If any Letter of Credit or Acceptance is outstanding at any time that the Borrower has failed to perform or observe (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement or at the date of termination of the applicable Credit, the Borrower will forthwith pay to CIBC, in the currency of such Letter of Credit or Acceptance, as the case may be, funds in an amount equal to the total maximum actual and contingent liability of CIBC pursuant thereto. Such funds will be held by CIBC for payment of the liability of the Borrower in respect of such Letter of Credit or Acceptance, as the case may be, and any excess thereof will be applied to any other liabilities of the Borrower pursuant to the Credits or will be returned to the Borrower at such time as no such liabilities exist or may arise.

9.8 **Undisbursed Credit.** For the purpose of calculating the undisbursed amount of any Credit and for any other relevant provision of this Agreement, the amount constituted by any Letter of Credit or Acceptance shall be the total maximum actual and contingent liability of CIBC pursuant thereto.

9.9 **Definitions.** In this Agreement, the following terms shall have the following meanings:

"Acceptance" means an outstanding bill of exchange which CIBC has accepted at the request of the Borrower and which CIBC is therefore obligated to pay at maturity.

"Letter of Credit" or "L/C" means a documentary or standby letter of credit, a letter of guarantee or a similar instrument, as the context may require, in form and substance satisfactory to CIBC.

10. INSTALMENT LOANS

10.1 **Instalment Loans.** The following terms apply to each Instalment Loan:

(a) **Non-revolving Loans.** Unless otherwise stated in this Agreement, any Instalment Loan is non-revolving. This means that any principal repayment is not available to be re-borrowed, and permanently reduces the amount of such Instalment Loan.

(b) **Floating Rate Instalment Loans.** Floating Rate Instalment Loans may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below:

(i) **Blended payments.** If a Floating Rate Instalment Loan has blended payments, the amount of the monthly payments is fixed for the term of such Loan, but the interest rate will vary with changes in the Prime Rate or the US Base Rate (as the case may be). If the Prime Rate or the US Base Rate during any month is lower than it was at the outset, a larger portion of the monthly payment will be allocated to principal and as a result such Loan may be repaid prior to its original maturity. If, however, the Prime Rate or the US Base Rate is higher than it was at the outset, the amount of principal that is repaid will be reduced, and as a result there may remain principal outstanding on the original maturity date.

(ii) **Payments of principal plus interest.** If a Floating Rate Instalment Loan has specified principal payments, in addition to interest, such principal payments are due on each specified payment date. The interest payment is also due on the same date, and will usually be a different amount each month due to the reducing balance of the Loan, the number of days in the month, and changes in the Prime Rate or the US Base Rate (as the case may be) during the month and from month to month.

(c) **Prepayment.** Unless otherwise specified in this Agreement:

(i) all or part of a Floating Rate Instalment Loan may be prepaid at any time without penalty; and

(ii) all (but not part) of a Fixed Rate Instalment Loan may be prepaid provided that the Borrower also pays to CIBC, on the prepayment date, any amount determined by CIBC pursuant to clause 4.3(iv) of this Schedule.

(d) **Demand of Fixed Rate Instalment Loans.** Upon demand for payment of a Fixed Rate Instalment Loan the Borrower will pay to CIBC the prepayment fee specified in clause 10.1(c)(ii) above.

(e) **Certain Definitions.** In this Agreement the following terms have the following meanings:

"Fixed Rate Instalment Loan" means an Instalment Loan with respect to which interest is payable at a fixed annual rate of interest (as opposed to being payable on the basis of the Prime Rate or the US Base Rate).

"Floating Rate Instalment Loan" means an Instalment Loan with respect to which interest is payable on the basis of the Prime Rate or the US Base Rate.

"Instalment Loan" means a principal amount that is repayable either in fixed instalments of principal, plus interest, or in blended instalments of both principal and interest, and that (notwithstanding any such specified instalments) is repayable on demand by CIBC at any time if so specified in this Agreement.

This is **Exhibit "B"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'M. A.', is written above a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

RECEIVED FEB 24 2012

**Amendment No. 1
to the Business Credit Agreement**

dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer:	CIBC Branch/Centre:
Vinco Holdings Ltd.	Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5

Amendments. The Agreement is amended as follows:

Credit D: Demand Instalment Loan

Credit Limit: Increased from \$660,860 to \$708,000.

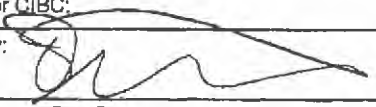

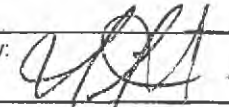
Scheduled Payments: The monthly principal payments made May 31, June 30, July 31 and August 31 of each year are increased from \$11,800 to \$12,650.

Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.

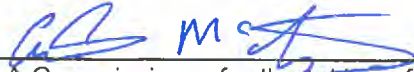
Dated as of:
February 16, 2012

For CIBC:

For the Customer:

By: 	By: 	By: 
Name: Don Prescott	Name: Alice Letang	Name: Neil Millar
Title: Assistant General Manager	Title: Financial Controller	Title: General Manager

This is **Exhibit "C"** referred to in the Affidavit of
Supriya Sarin made before me at Toronto, Ontario
this 27th day of May 2019.

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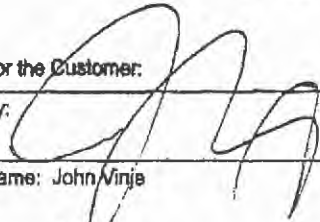
A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

**Amendment No. 2
to the Business Credit Agreement
dated December 8, 2011**

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Venco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5
Amendments. The Agreement is amended as follows: Credit A: Demand Revolving Loan Credit Limit: \$2,100,000 effective the date of this Agreement. This limit will be in effect until March 31, 2014 at which time the limit will reduce to \$1,800,000 and a further reduction to \$1,000,000 on June 1, 2014 with the seasonal limit established in the Business Credit Agreement dated December 8, 2011 to remain in effect thereafter. Reporting Requirements 3). Changed to: Internally prepared monthly financial statements are to be provided for Waterway Houseboats Ltd. within 30 days of the end of each month. During the period of October 2013 through to March 2014, the monthly statements are to be accompanied by a report recording the bookings and deposits received. Next Scheduled Review Date: Extended to September 30, 2014.	
Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.	
Dated as of: November 21, 2013	
For CIBC:	For the Customer:
By: 	By: 
Name: Barry Abel	Name: John Vinje
Title: Authorized Signatory	Title: President

This is **Exhibit "D"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be "M. J. S.", is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

CIBC Credit Processing Services
RECEIVED



CIBC
Commercial Banking

NOV 18 2014

Amendment No. 3
to the Business Credit Agreement
dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer:	CIBC Branch/Centre:
Vinco Holdings Ltd.	Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5

Amendments. The Agreement is amended as follows:

Credit E: Demand Instalment Loan

Credit Limit: \$1,750,000

Purpose: To recapitalize the Demand Revolving Loan for non-recurring 2012 flood related capital expenditures, losses and expenses.

Availment & Rates: Loans are available by way of Prime Rate Loans in Canadian dollars. Pricing as follows:
CIBC Prime rate plus 1.25%.

Scheduled Payments: Unless we make demand, you will pay CIBC as follows:

Interest only will be payable monthly with repayment to commence the earlier of:

- i) The lawsuit settlement from the 2012 flood or
- ii) May 31, 2016 when the first regular payment of principal and interest will be due, with four monthly principal payments due on May 31, June 30, July 31, and August 31 of each year are to be established based on a 15 year amortization period.

Special Condition/Provision: The net proceeds of the lawsuit settlement after repayment of 2012 accounts payable attributed to amounts owing to boat owners will be applied in a permanent reduction of this loan.


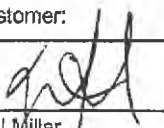
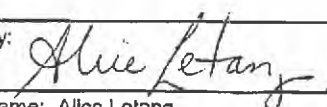
Next Scheduled Review Date: Extended to September 30, 2015.

Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.


Dated as of:
November 10, 2014

For CIBC:

For the Customer:

By: 	By: 	By: 
Name: Don Prescott	Name: Neil Millar	Name: Alice Letang
Title: Authorized Signatory	Title: General Manager	Title: Financial Controller

This is **Exhibit "E"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be "MSA" with a stylized flourish.

A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking


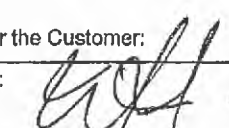

CIBC Credit Processing Services
RECEIVED

NOV 23 2015

**Amendment No. 4
to the Business Credit Agreement**

dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Vinco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5	
Amendments. The Agreement is amended as follows:		
Credit E: Demand Instalment Loan Scheduled Payments: Unless we make demand, you will pay CIBC as follows: Interest only will be payable monthly with repayment to commence the earlier of: i) The lawsuit settlement from the 2012 flood or ii) May 31, 2017 when the first regular payment of principal and interest will be due, with four monthly principal payments due on May 31, June 30, July 31, and August 31 of each year are to be established based on a 15 year amortization period.		
Credit F: Demand Instalment Loan Credit Limit: \$1,000,000 Purpose: To finance capital expenditures. Availment & Rates: Loans are available by way of Prime Rate Loans in Canadian dollars. Pricing as follows: CIBC Prime rate plus 1.25%. Scheduled Payments: Unless we make demand, you will pay CIBC as follows: Interest payable monthly with monthly principal payments of \$12,500 to be made May 31, June 30, July 31 and August 31 of each year. The loan is to be liquidated no later than September of 2035. Next Scheduled Review Date: Extended to September 30, 2016.		
Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.		
Dated as of: November 18, 2015		
For CIBC:	For the Customer:	
By: 	By: 	By: 
Name: Don Prescott	Name: Neil Millar	Name: Alice Letang
Title: Authorized Signatory	Title: General Manager	Title: Financial Controller

This is **Exhibit "F"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to read 'R.A. M.A.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

CIBC Credit Processing Services

DEC 01 2016

Amendment No. 5
to the Business Credit Agreement
dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Vinco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5
Amendments. The Agreement is amended as follows: Credit A : Demand Revolving Loan Credit Limit: \$2,300,000 effective the date of this agreement. This limit will be in effect until April 30, 2017. The limit will reduce to \$1,400,000 effective May 1, 2017 until June 1, 2017 at which time the limit will reduce to \$1,000,000. The seasonal limit established in the Business Credit Agreement dated December 8, 2011 to remain in effect thereafter. Credit B: Demand Instalment Loan Scheduled payments: Monthly principal payments reduced to \$28,000. The loan is to be liquidated no later than September of 2035. Credit C: Demand Instalment Loan Scheduled payments: Monthly principal payments reduced to \$2,900. The loan is to be liquidated no later than September of 2035. Credit D: Demand Instalment Loan Scheduled payments: Monthly principal payments reduced to \$5,500. The loan is to be liquidated no later than September of 2035. Credit E: Demand Instalment Loan Scheduled Payments: Unless we make demand, you will pay CIBC as follows: Interest only will be payable monthly with repayment to commence the earlier of: i) The lawsuit settlement from the 2012 flood or ii) May 31, 2018 when the first regular payment of principal and interest will be due, with four monthly principal payments due on May 31, June 30, July 31, and August 31 of each year are to be established based on a 15 year amortization period. Credit F: Demand Instalment Loan Credit Limit: \$1,360,000 Scheduled payments: Monthly principal payments adjusted to \$12,500. The loan is to be liquidated no later than September of 2035. Fee: An amendment fee of \$5,000 will apply, payable on acceptance of this Amendment Agreement Next Scheduled Review Date: Extended to September 30, 2017.	
Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.	
Dated as of: November 18, 2016	
For CIBC:	For the Customer:
By:	By:
Name: Don Prescott	Name: John Vinje
Title: Authorized Signatory	Title: President

This is **Exhibit "G"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'R. M. A.', is written over a horizontal line.

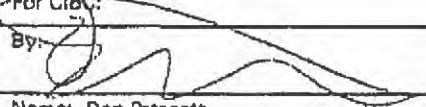
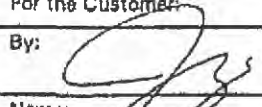
A Commissioner for the taking of Affidavits for
Ontario




CIBC
Commercial Banking

Amendment No. 6
to the Business Credit Agreement
dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Venco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C. V1Y 6N5
<p>Amendments. The Agreement is amended as follows:</p> <p>Credit A : Demand Revolving Loan Credit Limit: \$2,450,000 effective the date of this agreement. This limit will be in effect until April 30, 2017. The limit will reduce to \$1,750,000 effective May 1, 2017 until June 1, 2017 at which time the limit will reduce to \$1,200,000 with a further reduction to \$1,000,000 on July 1, 2018. The seasonal limit established in the Business Credit Agreement dated December 8, 2011 to remain in effect thereafter.</p> <p>Credit F: Demand Instalment Loan Credit Limit: \$1,560,000</p> <p>Scheduled payments: Monthly principal payments adjusted to \$15,625. The loan is to be liquidated no later than September of 2035.</p> <p>Fee: An amendment fee of \$5,000 will apply, payable on acceptance of this Amendment Agreement</p> <p>Next Scheduled Review Date: Extended to September 30, 2018.</p>	
<p>Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.</p> <p>Dated as of: September 22, 2017</p>	
For CIBC: By:  Name: Don Prescott Title: Authorized Signatory	For the Customer: By:  Name: John Vinje Title: President
	By: Name: Title:

This is **Exhibit "H"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.



A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

MAY - 8 2018

Amendment No. 7
to the **Business Credit Agreement**
dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Vinco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5
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Amendments. The Agreement is amended as follows:

Credit A: Demand Revolving Loan

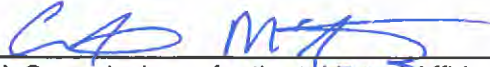
Credit Limit: \$2,000,000 effective as of May 1, 2018. This limit will be in effect until November 30, 2018 at which time the limit will reduce to the seasonal limit of \$1,000,000.

Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.

Dated as of: April 30, 2018

For CIBC:	For the Customer:	
By: 	By: 	By: 
Name: Don Prescott	Name: NEIL MILLAR	Name: Alice Letang
Title: Authorized Signatory	Title: Authorized Signatory	Title: Authorized Signatory

This is **Exhibit "I"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'C. P. M. S.', written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



CIBC
Commercial Banking

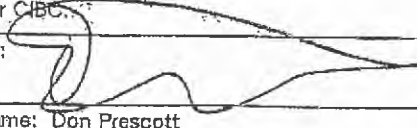
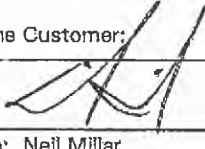
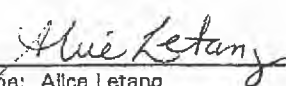
Credit Processing Services

JUL 17 2018

Received
17/07/2018

Amendment No. 8
to the Business Credit Agreement
dated December 8, 2011

Between Canadian Imperial Bank of Commerce ("CIBC") and the Customer noted below

Customer: Venco Holdings Ltd.	CIBC Branch/Centre: Commercial Banking Centre 328 Bernard Avenue Kelowna, B.C., V1Y 6N5	
Amendments. The Agreement is amended as follows: Credit G: Demand Instalment Loan Credit Limit: \$210,500 Purpose: To finance the purchase of the Houseboat vessel Penelope. Availment & Rates: Loans are available by way of Prime Rate Loans in Canadian dollars. Pricing as follows: CIBC Prime rate plus 1.25%. Scheduled Payments: Unless we make demand, you will pay CIBC as follows: Interest payable monthly with monthly principal payments of \$7,520 to be made May 31, June 30, July 31 and August 31 of each year. The loan is to be liquidated no later than September of 2025. Condition Precedent Advance of the loan is to be subject to satisfactory confirmation that the vessel has been registered in the name of Waterway Houseboats Ltd.		
Other Matters. (1) The term "the Agreement" means the Business Credit Agreement referred to above, as it may have been revised up to the date of this Amendment. (2) Except as revised by this Amendment, the Agreement remains in full force.		
Dated as of: July 4, 2018		
For CIBC: By: 	For the Customer: By: 	By: 
Name: Don Prescott	Name: Neil Miller	Name: Alice Letang
Title: Authorized Signatory	Title: Chief Operations Officer	Title: Chief Financial Officer

This is **Exhibit "J"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.



A Commissioner for the taking of Affidavits for
Ontario



Bank Office

For valuable consideration, we, the undersigned guarantor, agree with Canadian Imperial Bank of Commerce ("CIBC") as follows:

1. **Customer's Name:** The name of the customer whose debts we are guaranteeing is **VINCO HOLDINGS LTD.** (the "Customer").

2. **Guarantee.** I guarantee payment to CIBC of all the Customer's Debts. My liability under this Guarantee is:

a) ☒ unlimited

b) ☐ limited to the principal sum of \$_____ plus interest and expenses in accordance with Section 5.

Note: If neither box (a) nor box (b) is checked off, or if both are checked off, or if box (b) is checked off but no figure is inserted in the blank, then box (a) alone will be considered to have been checked off.

3. **Governing Law.** This Guarantee is governed by the laws of British Columbia (without reference to the choice of law rules). I irrevocably agree to submit to the non-exclusive jurisdiction of its courts.

4. **Copy Received.** I acknowledge having received a copy of this Guarantee.

NOTE: The "Additional Terms and Conditions of this Guarantee" on the following pages form part of this Guarantee.

Dated: Nov. 29, 2010

WATERWAY HOUSEBOATS LTD.

Inc. No. BC0405328

Guarantor's Name (record in full)

c/o 3rd Floor, 1665 Ellis Street, Kelowna, B.C. V1Y 2B3

Guarantor's Address

Waterway Houseboats Ltd. by its Authorized Signatory:

x

Alice Litang
JOHN GILBERT VINJE, PRESIDENT

ALICE LITANG, PRESIDENT

Note: i) If the Guarantor is a corporation, no witness is needed. The office (such as "President" or "Secretary") of the person signing should be noted below that person's signature. The corporation's seal should be affixed if the resolution so states.
ii) If the Guarantor is an individual, a red wafer seal is advisable, but not mandatory. (No seal required in Quebec.)

Additional Terms and Conditions of this Guarantee

5. **Payment on demand.** I will immediately pay CIBC on demand:
- a) the amount (and in the currency) of the Customer's Debts (but if Section 2(b) applies, subject to that limitation), plus any expenses (including all legal fees and disbursements) incurred by CIBC in enforcing any of CIBC's rights under this Guarantee; and
 - b) interest (including interest on overdue interest, compounded monthly) on unpaid amounts due under this Guarantee calculated from the date on which those amounts were originally demanded until payment in full, both before and after judgment, at the rates (and in the currency) applicable to the corresponding Customer's Debts.
6. **Making Demand.** Demand and any other notices given under this Guarantee will be conclusively considered to have been made upon me when the envelope containing it, addressed to me (or, if there is more than one Person signing this Guarantee, to any one of us) at the last address known to CIBC, is deposited, postage prepaid, first class mail, in a post office, or is personally delivered to that address. I will give CIBC immediate written notice, addressed to the Manager of the Bank Office, of each and every change of my address.
7. **No Setoff or Counterclaim.** I will make all payments required to be made under this Guarantee without regard to any right of setoff or counterclaim that I have or may have against the Customer or CIBC.
8. **Application of Moneys Received.** CIBC may apply all moneys received from me, the Customer or any other Person (including under any Security that CIBC may from time to time hold) upon such part of the Customer's Debts as CIBC considers appropriate.
9. **Exhausting Recourse.** CIBC does not need to exhaust its recourse against the Customer or any other Person or under any Security CIBC may from time to time hold before being entitled to full payment from me under this Guarantee.
10. **Absolute Liability.** My liability under this Guarantee is absolute and unconditional. It will not be limited or reduced, nor will CIBC be responsible or owe any duty (as a fiduciary or otherwise) to me, nor will CIBC's rights under this Guarantee be prejudiced, by the existence or occurrence (with or without my knowledge or consent) of any one or more of the following events:
- a) any termination, invalidity, unenforceability or release by CIBC of any of its rights against the Customer or against any other Person or of any Security;
 - b) any increase, reduction, renewal, substitution or other change in, or discontinuance of, the terms relating to the Customer's Debts or to any credit extended by CIBC to the Customer; any agreement to any proposal or scheme of arrangement concerning, or granting any extensions of time or any other indulgences or concessions to, the Customer or any other Person; any taking or giving up of any Security; abstaining from taking, perfecting or registering any Security; allowing any Security to lapse (whether by failing to make or maintain any registration or otherwise); or any neglect or omission by CIBC in respect of, or in the course of, doing any of these things;
 - c) accepting compositions from or granting releases or discharges to the Customer or any other Person, or any other dealing with the Customer or any other Person or with any Security that CIBC considers appropriate;
 - d) any unenforceability or loss of or in respect of any Security held from time to time by CIBC from me, the Customer or any other Person, whether the loss is due to the means or timing of any registration, disposition or realization of any collateral that is the subject of that Security or otherwise due to CIBC's fault or any other reason;
 - e) the death of the Customer; any change in the Customer's name; or any reorganization (whether by way of amalgamation, merger, transfer, sale, lease or otherwise) of the Customer or the Customer's business;
 - f) any change in my financial condition or that of the Customer or any other Guarantor (including insolvency and bankruptcy);
 - g) if I am or the Customer is a corporation, any change of effective control, or if I am or the Customer is a partnership, a dissolution or any change in the membership;
 - h) any event, whether or not attributable to CIBC, that may be considered to have caused or accelerated the bankruptcy or insolvency of the Customer or any Guarantor, or to have resulted in the initiation of any such proceedings;
 - i) CIBC's filing of any claim for payment with any administrator, provisional liquidator, conservator, trustee, receiver, custodian or other similar officer appointed for the Customer or for all or substantially all of the Customer's assets;
 - j) any failure by CIBC to abide by any of the terms and conditions of CIBC's agreements with, or to meet any of its obligations or duties owed to me, the Customer or any Person, or any breach of any duty (whether as a fiduciary or otherwise) that exists or is alleged to exist between CIBC and me, the Customer or any Person;
 - k) any incapacity, disability, or lack or limitation of status or of the power of the Customer or of the Customer's directors; managers, officers, partners or agents; the discovery that the Customer is not or may not be a legal entity; or any irregularity, defect or informality in the incurring of any of the Customer's Debts; or
 - l) any event whatsoever that might be a defence available to, or result in a reduction or discharge of, me, the Customer or any other Person in respect of either the Customer's Debts or my liability under this Guarantee.

For greater certainty, I agree that CIBC may deal with me, the Customer and any other Person in any manner without affecting my liability under this guarantee.

11. **Principal Debtor.** All moneys and liabilities (whether matured or unmatured, present or future, direct or indirect, absolute or contingent) obtained from CIBC will be deemed to form part of the Customer's Debts, notwithstanding the occurrence of any one or more of the events described in Section 10(k). I will pay CIBC as principal debtor any amount that CIBC cannot recover from me as Guarantor immediately following demand as provided in this Guarantee.

12. **No Liability for Negligence, etc.** CIBC will not be liable to me for any negligence or any breaches or omissions on the part of CIBC, or any of its employees, officers, directors or agents, or any receivers appointed by CIBC, in the course of any of its or their actions.
13. **Continuing Guarantee.** This is a continuing guarantee of the Customer's Debts.
14. **Terminating Further Liability.** I may discontinue any further liability to pay the Customer's Debts by written notice to the Bank Office. I will, however, continue to be liable under this Guarantee for any of the Customer's Debts that the Customer incurs up to and including the 30th day after CIBC receives my notice.
15. **Statement Conclusive.** Except for demonstrable errors or omissions, the amount appearing due in any account stated by CIBC or settled between CIBC and the Customer will be conclusive as to that amount being due.
16. **CIBC's Priority.**
 - a) If any payment made to CIBC by the Customer or any other Person is subsequently rendered void or must otherwise be returned for any reason, I will be liable for that payment (but if Section 2(b) applies, subject to that limitation). Until all of CIBC's claims against the Customer in respect of the Customer's Debts have been paid in full, I will not require that CIBC assign to me any Security held, or any other rights that CIBC may have, in connection with the Customer's Debts, and I will not assert any right of contribution against any Guarantor, or claim repayment from the Customer, for any payment that I make under this Guarantee.
 - b) If the Customer is bankrupt, or (if the Customer is a corporation) liquidated or wound up, or if the Customer makes a bulk sale of any assets under applicable law, or if the Customer proposes any composition with creditors or any scheme of arrangement, CIBC will be entitled to all dividends and other payments until CIBC is paid in full, and I will remain liable under this Guarantee (but if Section 2(b) applies, subject to that limitation).
 - c) If CIBC gives to any trustee in bankruptcy or receives a valuation of, or retains, any Security that CIBC holds for payment of the Customer's Debts, that will not be considered, as between CIBC and me, to be a purchase of such Security or payment, satisfaction or reduction of the Customer's Debts.
17. **Assignment and Postponement of Claim.** I postpone in favour of CIBC all debts and liabilities that the Customer now owes or later may from time to time owe to me in any manner until CIBC is paid in full. I further assign to CIBC all such debts and liabilities, to the extent of the Customer's Debts, until CIBC is paid in full. If I receive any moneys in payment of any such debts and liabilities, I will hold them in trust for, and will immediately pay them to, CIBC without reducing my liability under this Guarantee.
18. **Withholding Taxes.** Unless a law requires otherwise, I will make all payments under this Guarantee without deduction or withholding for any present or future taxes of any kind. If a law does so require, I will pay to CIBC an additional amount as is necessary to ensure CIBC receives the full amount CIBC would have received if no deduction or withholding had been made.
19. **Judgment Currency.** My liability to pay CIBC in a particular currency (the "First Currency") will not be discharged or satisfied by any tender or recovery under any judgment expressed in or converted into another currency (the "Other Currency") except to the extent the tender or recovery results in CIBC's effective receipt of the full amount of the First Currency so payable. Accordingly, I will be liable to CIBC in an additional cause of action to recover in the Other Currency the amount (if any) by which that effective receipt falls short of the full amount of the First Currency so payable, without being affected by any judgment obtained for any other sums due.
20. **Consent to Disclose Information.** CIBC may from time to time give any credit or other information about me to, or receive such information from, any credit bureau, reporting agency or other Person.
21. **General.** Any provision of this Guarantee that is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. If two or more Persons sign this Guarantee, each Person's liability will be joint and several. This Guarantee is in addition and without prejudice to any Security of any kind now or in the future held by CIBC. There are no representations, collateral agreements or conditions with respect to, or affecting my liability under, this Guarantee other than as contained in this Guarantee.
22. **Quebec Only.** If this Guarantee is governed by the laws of Quebec:
 - a) I acknowledge that the terms and conditions of the Customer's Debts have been expressly brought to my attention;
 - b) I renounce the benefit of division and discussion;
 - c) if two or more Persons sign this Guarantee, each Person's liability will be solidary;
 - d) I acknowledge that the thirty days' notice specified in Section 14 constitutes prior and sufficient notice to CIBC;
 - e) if this Guarantee is attached to the performance of special duties, I agree that this Guarantee shall not terminate upon cessation of such duties; and
 - f) it is the express wish of the parties that this document and any related documents be drawn up in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés en anglais.
23. **Definitions.** In this Guarantee:
 - a) "Bank Office" means the CIBC office noted on the first page of this Guarantee, or such address as CIBC may, from time to time, advise me in the manner provided in Section 6;
 - b) "Customer's Debts" means the debts and liabilities that the Customer has incurred or may incur with CIBC including, among other things, those in respect of dealings between the Customer and CIBC, as well as any other dealings by which the Customer may become indebted or liable to CIBC in any manner whatever;

Guarantee

- c) "Guarantor" means any Person who has guaranteed or later guarantees to CIBC any or all of the Customer's Debts, whether or not such Person has signed this Guarantee or another document;
- d) "I", "me" and "my" mean the Person who has signed this Guarantee, and if two or more Persons sign, each of them;
- e) "Person" includes a natural person, personal representative, partnership, corporation, association, organization, estate, trade union, church or other religious organization, syndicate, joint venture, trust, trustee in bankruptcy, government and government body and any other entity, and, where appropriate, specifically includes any Guarantor;
- f) "Section" means a section or paragraph of this Guarantee;
- g) "Security" means any security held by CIBC as security for payment of the Customer's Debts and includes, among other things, any and all guarantees.

This is **Exhibit "K"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CA M A', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



5100 95/12 (Computer Generated)
For use in PPSA jurisdictions only

Canadian Imperial Bank of Commerce
328 Bernard Avenue
Kelowna, B.C. V1Y 6N5,

Branch

SECURITY AGREEMENT

For valuable consideration, the undersigned (the "Customer") agrees with Canadian Imperial Bank of Commerce ("CIBC") as follows:

1. **Grant of Security.** The Customer mortgages, charges and assigns to CIBC, and grants to CIBC, and CIBC takes, a Security Interest in the property described in the following paragraph or paragraphs of this section (as applicable in accordance with the NOTE appearing at the end of this section), and in all property described in any schedules, documents or listings that the Customer may from time to time sign and provide to CIBC in connection with this Agreement, and in all present and future Accessions to, and all Proceeds of, any such property (collectively, the "Collateral") as a general and continuing collateral security for the due payment and performance of the Liabilities:

- ☒ (a) **Specific Personal Property:** the Personal Property described in Schedule A.
- ☒ (b) **All Personal Property:** all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A).
- ☐ (c) **All Real Property:** all of the Customer's present and after-acquired real property (including any property that may be described in Schedule A), together with all buildings placed, installed or erected on any such property, and all fixtures.

NOTE: Check appropriate box or boxes to indicate which of paragraphs (a), (b) or (c) are to apply. If no box is checked off, paragraph (b) will apply.

2. **Governing Law.** This Agreement is governed by the laws of British Columbia.

ADDITIONAL TERMS AND CONDITIONS. THE ADDITIONAL TERMS AND CONDITIONS (INCLUDING ANY SCHEDULES) ON THE FOLLOWING PAGES FORM PART OF THIS AGREEMENT.

The Customer has signed this Agreement on November 29, 2010.

VINCO HOLDINGS LTD.

Customer's name in full

Authorized Signatory: ~~JOHN GILBERT VINJE~~, ALICE LETANG
~~PRESIDENT~~

PO Box 69

Customer's street address

Sicamous, B.C. V0E 2V1

City/Town, Province and Postal Code

Note: If the Customer is a corporation, no witness is needed. The office (such as "President" or "Secretary") of the person signing should be noted below that person's signature.

FOR INDIVIDUALS ONLY, record the following information:				
First and second names in full; surname	Birth Date*			Sex
		Month		M/F

* For Alberta, Ontario, Saskatchewan and the Yukon, record: day/month/year.

For British Columbia, Manitoba, New Brunswick, and Nova Scotia record: year/month/day.

Schedule A

The following is a description of the property in the Collateral (describe personal property by item or kind; if space is insufficient, use a separate sheet):

(a) Specified Personal Property:

Licence of Occupation 344093, granted by Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister responsible for the *Land Act* over all that unsurveyed Crown foreshore being part of the bed of Mara Lake and fronting on Lot 1 Sections 19 and 30 Township 12 Range 7 West of the 6th Meridian, Kamloops Division, Yale District, Plan KAP86301 and containing 0.49 hectares, more or less, for the term mentioned therein, for a commercial marina including the moorage of houseboats

Schedule B

The following are the Places of Business (if space is insufficient, use a separate sheet):

01 Mervyn Rd Sicamous BC V0E 2V0

ADDITIONAL TERMS AND CONDITIONS

3. **Places of Business.** The Customer represents and warrants that the locations of all existing Places of Business are specified in Schedule B. The Customer will promptly notify CIBC in writing of any additional Places of Business as soon as they are established. Subject to section 5, the Collateral will at all times be kept at the Places of Business, and will not be removed without CIBC's prior written consent.
4. **Collateral Free of Charges.** The Customer represents and warrants that the Collateral is, and agrees that the Collateral will at all times be, free of any Charge or trust except in favour of CIBC or incurred with CIBC's prior written consent. CIBC may, but will not have to, pay any amount or take any action required to remove or redeem any unauthorized Charge. The Customer will immediately reimburse CIBC for any amount so paid and will indemnify CIBC in respect of any action so taken.
5. **Use of Collateral.** The Customer will not, without CIBC's prior written consent, sell, lease or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business). All Proceeds of the Collateral (including among other things all amounts received in respect of Receivables), whether or not arising in the ordinary course of the Customer's business, will be received by the Customer as trustee for CIBC and will be immediately paid to CIBC.
6. **Insurance.** The Customer will keep the Collateral insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for property similar to the Collateral (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies in respect of such insurance will contain a loss payable clause, and if the Collateral includes real property will contain a mortgage clause, in favour of CIBC and in any event the Customer assigns all proceeds of insurance on the Collateral to CIBC. The Customer will, from time to time at CIBC request, deliver such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain such insurance, CIBC may, but will not have to, do so. The Customer will immediately reimburse CIBC for any amount so paid. The Customer will promptly give CIBC written notice of any loss or damage to all or any part of the Collateral.
7. **Information and Inspection.** The Customer will from time to time immediately give CIBC in writing all information requested by CIBC relating to the Collateral, the Places of Business, and the Customer's financial or business affairs. The Customer will promptly advise CIBC of the Serial Number, model year, make and model of each Serial Number Good at any time included in the Collateral that is held as Equipment, including in circumstances where the Customer ceases holding such Serial Number Good as Inventory and begins holding it as Equipment. CIBC may from time to time inspect any Books and Records and any Collateral, wherever located. For that purpose CIBC may, without charge, have access to each Place of Business and to all mechanical or electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved. The Customer authorizes any Person holding any Books and Records to make them available to CIBC, in a readable form, upon request by CIBC.
8. **Receivables.** If the Collateral includes Receivables, CIBC may advise any Person who is liable to make any payment to the Customer of the existence of this Agreement. CIBC may from time to time confirm with such Persons the existence and the amount of the Receivables. Upon Default, CIBC may collect and otherwise deal with the Receivables in such manner and upon such terms as CIBC considers appropriate.
9. **Receipts Prior to Default.** Until Default, all amounts received by CIBC as Proceeds of the Collateral will be applied on account of the Liabilities in such manner and at such times as CIBC may consider appropriate or, at CIBC's option, may be held unappropriated in a collateral account or released to the Customer.
10. **Default.**
 - (1) **Events of Default.** The occurrence of any of the following events or conditions will be a Default:
 - (a) the Customer does not pay any of the Liabilities when due;
 - (b) the Customer does not observe or perform any of the Customer's obligations under this Agreement or any other agreement or document existing at any time between the Customer and CIBC;
 - (c) any representation, warranty or statement made by or on behalf of the Customer to CIBC is untrue in any material respect at the time when or as of which it was made;
 - (d) the Customer ceases or threatens to cease to carry on in the normal course the Customer's business or any material part thereof;
 - (e) if the Customer is a corporation, there is, in CIBC's reasonable opinion, a change in effective control of the Customer, or if the Customer is a partnership, there is a dissolution or change in the membership of the partnership;
 - (f) the Customer becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or similar legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Customer; or, if the Customer is a corporation, steps are taken under any legislation by or against the Customer seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;

- (g) a Receiver, trustee, custodian or other similar official is appointed in respect of the Customer or any of the Customer's property;
 - (h) the holder of a Charge takes possession of all or any part of the Customer's property, or a distress, execution or other similar process is levied against all or any part of such property; or
 - (i) CIBC, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy.
- (2) **Rights upon Default.** Upon Default, CIBC and a Receiver, as applicable, will to the extent permitted by law have the following rights.
- (a) **Appointment of Receiver.** CIBC may by instrument in writing appoint any Person as a Receiver of all or any part of the Collateral. CIBC may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by CIBC will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Customer's agent. CIBC may from time to time fix the Receiver's remuneration and the Customer will pay CIBC the amount of such remuneration. CIBC will not be liable to the Customer or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.
 - (b) **Dealings with the Collateral.** CIBC or a Receiver may take possession of all or any part of the Collateral and retain it for as long as CIBC or the Receiver considers appropriate, receive any rents and profits from the Collateral, carry on (or concur in carrying on) all or any part of the Customer's business or refrain from doing so, borrow on the security of the Collateral, repair the Collateral, process the Collateral, prepare the Collateral for sale, lease or other disposition, and sell or lease (or concur in selling or leasing) or otherwise dispose of the Collateral on such terms and conditions (including among other things by arrangement providing for deferred payment) as CIBC or the Receiver considers appropriate. CIBC or the Receiver may (without charge and to the exclusion of all other Persons including the Customer) enter upon any Place of Business.
 - (c) **Realization.** CIBC or a Receiver may use, collect, sell, lease or otherwise dispose of, realize upon, release to the Customer or other Persons and otherwise deal with, the Collateral in such manner, upon such terms (including among other things by arrangement providing for deferred payment) and at such times as CIBC or the Receiver considers appropriate. CIBC or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Customer or otherwise.
 - (d) **Application of Proceeds After Default.** All Proceeds of Collateral received by CIBC or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration and other expenses of enforcing CIBC's rights under this Agreement), Charges, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by CIBC or the Receiver to preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Charges on the Collateral ranking in priority to any Charge created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as CIBC considers appropriate and thereafter will be accounted for as required by law.
- (3) **Other Legal Rights.** Before and after Default, CIBC will have, in addition to the rights specifically provided in this Agreement, the rights of a secured party under the PPSA, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon or merge in any other right, and one or more of such rights may be exercised independently or in combination from time to time.
- (4) **Deficiency.** The Customer will remain liable to CIBC for payment of any Liabilities that are outstanding following realization of all or any part of the Collateral.
11. **CIBC not Liable.** CIBC will not be liable to the Customer or any other Person for any failure or delay in exercising any of its rights under this Agreement (including among other things any failure to take possession of, collect, or sell, lease or otherwise dispose of, any Collateral). None of CIBC, a Receiver or any agent of CIBC (including, in Alberta, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Chattel Paper, Securities or Instrument in possession of CIBC, a Receiver or CIBC's agent.
12. **Charges and Expenses.** The Customer agrees to pay on demand all costs and expenses incurred (including among other things legal fees on a solicitor and client basis) and fees charged by CIBC in connection with obtaining or discharging this Agreement or establishing or confirming the priority of the Charges created by this Agreement or by law, compliance with any demand by any Person under the PPSA to amend or discharge any registration relating to this Agreement, and by CIBC or any Receiver in exercising any remedy under this Agreement (including among other things preserving, repairing, processing, preparing for disposition and disposing of the Collateral by sale, lease or otherwise) and in carrying on the Customer's business. All such amounts will bear interest from time to time at the highest interest rate then applicable to any of the

Liabilities, and the Customer will reimburse CIBC upon demand for any amount so paid.

13. **Further Assurances.** The Customer will from time to time immediately upon request by CIBC take such action (including among other things the signing and delivery of financing statements and financing change statements, other schedules, documents or listings describing property included in the Collateral, further assignments and other documents, and the registration of this Agreement or any other Charge against any of the Customer's real property) as CIBC may require in connection with the Collateral or as CIBC may consider necessary to give effect to this Agreement. If permitted by law, the Customer waives the right to sign or receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms any registration of a financing statement or financing change statement, relating to this Agreement. The Customer irrevocably appoints the Manager or the Acting Manager from time to time of CIBC's branch specified on the first page of this Agreement as the Customer's attorney (with full powers of substitution and delegation) to sign, upon Default, all documents required to give effect to this section. Nothing in this section affects the right of CIBC as secured party, or any other Person on CIBC's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as CIBC or such other Person considers appropriate.
14. **Dealings by CIBC.** CIBC may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time and other indulgences, take and give up any Charge, abstain from taking, perfecting or registering any Charge, accept compositions, grant releases and discharges and otherwise deal with the Customer, customers of the Customer, guarantors and others, and with the Collateral and any Charges held by CIBC, as CIBC considers appropriate without affecting the Customer's obligations to CIBC or CIBC's rights under this Agreement.
15. **Definitions.** In this Agreement:

"Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Proceeds", "Purchase-Money Security Interest" and "Security Interest" have the respective meanings given to them in the PPSA.

"Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording, evidencing or relating to the Collateral to which the Customer (or any Person on the Customer's behalf) has access.

"Charge" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, financial lease, title retention agreement or arrangement, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.

"Consumer Goods" has the meaning given to it in the PPSA, except that, if this Agreement is governed by the laws of the Yukon, it does not include special consumer goods as that term is defined in the Yukon PPSA.

"Default" has the meaning set out in subsection 10(1).

"Liabilities" means all present and future indebtedness and liability of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Customer to CIBC, wherever and however incurred and any unpaid balance thereof.

"Money" has the meaning given to it in the PPSA or, if there is no such definition, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.

"Person" means any natural person or artificial body (including among others any firm, corporation or government).

"Personal Property" means personal property and includes among other things Inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.

"Place of Business" means a location where the Customer carries on business or where any of the Collateral is located (including any location described in Schedule B).

"PPSA" means the legislation that applies in the province or territory noted in section 2 of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation) as follows: in the case of Ontario, the Personal Property Security Act, 1989; in the case of Alberta, British Columbia, Manitoba, Prince Edward Island, Saskatchewan and the Yukon Territory, the Personal Property Security Act; and in the case of any other province or territory, such legislation as deals generally with Charges on personal property.

"Receivables" means all debts, claims and choses in action (including among other things Accounts and Chattel Paper) now or

in the future due or owing to or owned by the Customer.

"Receiver" means a receiver or a receiver and manager.

"Securities" has the meaning given to it in the PPSA or, if there is no such definition and the PPSA defines "security" instead, it means the plural of that term.

"Serial Number" means the number that the Person who manufactured or constructed a Serial Number Good permanently marked or attached to it for identification purposes or, if applicable, such other number as the PPSA stipulates as the serial number or vehicle information number to be used for registration purposes of such Serial Number Good.

"Serial Number Good" means a motor vehicle, trailer, mobile home, aircraft airframe, aircraft engine or aircraft propeller, boat or an outboard motor for a boat.

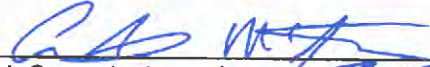
16. **General.**

- (1) **Reservation of the Last Day of any Lease.** The Charges created by this Agreement do not extend to the last day of the term of any lease or agreement for lease; however, the Customer will hold such last day in trust for CIBC and, upon the exercise of CIBC of any of its rights under this Agreement following Default, will assign such last day as directed by CIBC.
- (2) **Attachment of Security Interest.** The Security Interests created by this Agreement are intended to attach (i) to existing Collateral when the Customer signs this Agreement, and (ii) to Collateral subsequently acquired by the Customer, immediately upon the Customer acquiring any rights in such Collateral. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.
- (3) **Purchase-Money Security Interest.** If CIBC gives value for the purpose of enabling the Customer to acquire rights in or to any of the Collateral, the Customer will in fact apply such value to acquire those rights (and will provide CIBC with such evidence in this regard as CIBC may require), and the Customer grants to CIBC, and CIBC takes, a Purchase-Money Security Interest in such Collateral to the extent that the value is applied to acquire such rights. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the amount of any such value.
- (4) **Description of Collateral in Schedule A.** The fact that box (b) or box (c) of section 1 has been checked without there being any property described in Schedule A does not affect the nature or validity of CIBC's security in the Collateral.
- (5) **Entire Agreement.** CIBC has not made any representation or undertaken any obligation in connection with the subject matter of this Agreement other than as specifically set out in this Agreement, and in particular nothing contained in this Agreement will require CIBC to make, renew or extend the time for payment of any loan or other credit accommodation to the Customer or any other Person.
- (6) **Additional Security.** The Charges created by this Agreement are in addition and without prejudice to any other Charge now or later held by CIBC. No Charge held by CIBC will be exclusive of or dependent upon or merge in any other Charge, and CIBC may exercise its rights under such Charges independently or in combination.
- (7) **Joint and Several Liability.** If more than one Person signs this Agreement as the Customer, the obligations of such Persons will be joint and several.
- (8) **Severability; Headings.** Any provision of this Agreement that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of this Agreement. The headings in this Agreement are for convenience only and do not limit or extend the provisions of this Agreement.
- (9) **Interpretation.** When the context so requires, the singular will be read as the plural, and vice versa.
- (10) **Copy of Agreement.** The Customer acknowledges receipt of a copy of this Agreement.
- (11) **Waivers.** If this Agreement is governed by the laws of Saskatchewan and the Customer is a corporation, the Customer agrees that The Limitation of Civil Rights Act, The Land Contracts (Actions) Act and Part IV (excepting only section 46) of The Saskatchewan Farm Security Act do not apply insofar as they relate to actions as defined in those Acts, or insofar as they relate to or affect this Agreement, the rights of CIBC under this Agreement or any instrument, Charge, security agreement or other document of any nature that renews, extends or is collateral to this Agreement.
- (12) **Notice.** CIBC may send to the Customer, by prepaid regular mail addressed to the Customer at the Customer's address last known to CIBC, copies of any documents required by the PPSA to be delivered by CIBC to the Customer. Any document mailed in this manner will be deemed to have been received by the Customer upon the earlier of actual receipt by the Customer and the expiry of 10 days after the mailing date. A certificate or affidavit of any of CIBC's authorized

representatives is admissible in evidence to establish the mailing date.

- (13) **Enurement; Assignment.** This Agreement will enure to the benefit of and be binding upon (i) CIBC, its successors and assigns, and (ii) the Customer and the Customer's heirs, executors, administrators, successors and permitted assigns. The Customer will not assign this Agreement without CIBC's prior written consent.

This is **Exhibit "L"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

**LAND TITLE ACT
FORM B (Section 225)**
MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 4 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
FH&P Lawyers
Barristers and Solicitors
2nd Floor 215 Lawrence Avenue
Kelowna
BC V1Y 6L2
Phone: (250) 869-6048
File Ref. No: 68119/JDF/sr
LTO Client No: 10343
Deduct LTSA Fees? Yes ☒
2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[legal description]

027-514-013
Lot 1 Sections 19 and 30 Twp 21 R7 W6M KDYD Plan KAP86301
STC? YES ☐
3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))
VINCO HOLDINGS LTD.
PO Box 69
Sicamous
BC
Incorporation No
BC0823825
V0E 2V1
4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))
CANADIAN IMPERIAL BANK OF COMMERCE
Credit Processing Services, 595 Bay Street, Suite 500
Toronto
ON
M5G 2C2
5. PAYMENT PROVISIONS:

(a) Principal Amount:

\$7,000,000.00

(b) Interest Rate:

See Schedule

(c) Interest Adjustment

Date: N/A

Y	M	D
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(d) Interest Calculation Period:

Monthly, not in advance

(e) Payment Dates:

N/A

(f) First Payment

Date: N/A

(g) Amount of each periodic payment:

N/A
(h) *Interest Act* (Canada) Statement.

The equivalent rate of interest calculated half yearly not in advance is **N/A** % per annum.

(i) Last Payment

Date: N/A

(j) Assignment of Rents which the applicant wants registered?

YES ☒ NO ☐
If YES, page and paragraph number:
**MT900102 Page 15
Paragraph 15**

(k) Place of payment:

Postal Address In Item 4

(l) Balance Due

Date: On Demand

6. MORTGAGE contains floating charge on land?
YES ☐ NO ☒

7. MORTGAGE secures a current or running account?
YES ☒ NO ☐

8. INTEREST MORTGAGED:
Freehold ☒
Other (specify) ☐

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

(a) Prescribed Standard Mortgage Terms ☐

(b) Filed Standard Mortgage Terms ☒

(c) Express Mortgage Terms ☐

D F Number: MT900102

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

See Schedule

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

Undersurface Rights 26051E; Easement KG12274; Covenant LB201972; Covenant LB201973

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

RICK PUSOR
BARRISTER & SOLICITOR
#301-1655 ELLIS STREET
KELOWNA, BC V1Y 2B3
PHONE: 762-2108

Execution Date

Y	M	D
2010	11	27

Borrower(s) Signature(s)

Vinco Holdings Ltd.
by its authorized signatory:

Alice Letany
Print Name
ALICE LETANY

Print Name

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Land Title Act
Form E
SCHEDULE

Enter the required information in the same order as the information must appear on the Freehold Transfer form, Mortgage form, or General Instrument form.

Notwithstanding any other provisions of this Mortgage (including any standard mortgage terms incorporated by reference) if the Bank is called upon to make a payment for the account of the Mortgagor pursuant to a letter of credit, letter of guarantee or acceptance of a bill of exchange or other negotiable instrument payment by the Bank shall constitute an advance under this Mortgage which the Bank shall be required to make.

(c) Environmental Laws

1. **Definitions** - In this provision "hazardous substance" includes, without limitation, any substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal or plant health or life or the environment, and in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority or competent jurisdiction.
2. **Representations** - The Mortgagor represents and warrants to the Bank that to the best of the Mortgagor's information and belief, after due enquiry and investigation:
 - i. the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders);
 - ii. the Property does not contain any hazardous substances deposited added or discharged by the Mortgagor or a prior owner, lessee or occupier of the Property or any adjoining property.
3. **Covenant** - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.
4. **Indemnity** - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.

ACKNOWLEDGMENT OF RECEIPT OF STANDARD MORTGAGE TERMS

I/We acknowledge receipt from Canadian Imperial Bank of Commerce and FH&P Lawyers of:

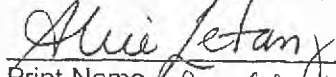
1. a true copy of the set of Prescribed mortgage terms MT900102
2. a copy of the Mortgage - Part 1 (Form B Land Title Act) and any Schedule(s) referred to therein

at or before the time that I/we executed the Form B Mortgage Part 1.

Dated this 29 day of November, 2010.

Vinco Holdings Ltd.

by its authorized signatory:



Print Name Alice Letany

Print Name

DESCRIPTION OF MORTGAGE

NAME OF LENDER: Canadian Imperial Bank of Commerce

PRINCIPAL AMOUNT: \$7,000,000.00

DATE OF EXECUTION BY BORROWER: 29 day of November, 2010

LEGAL DESCRIPTION AND PARCEL IDENTIFIER NO.: Lot 1 Sections 19 and 30 Twp 21 R7 W6M KDYD
Plan KAP86301 (PID 027-514-013)

This is **Exhibit "M"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CD M. T. S.', written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



CANADIAN IMPERIAL BANK OF
COMMERCE

MORTGAGE OF LICENCE OF OCCUPATION

THIS AGREEMENT dated November 29, 2010.

BETWEEN:

VINCO HOLDINGS LTD. (B.C. Incorporation No. BC0823825)
P.O. Box 69
Sicamous, British Columbia
V0E 2V0

(the "Borrower")

OF THE FIRST PART

AND:

CANADIAN IMPERIAL BANK OF COMMERCE
Credit Processing Services
595 Bay Street, Suite 500
Toronto, Ontario M5G 2C2

(the "Bank")

OF THE SECOND PART

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| 9. Enlargement of Mortgage | 21. Possession |
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WHEREAS:

A. By a certain Licence of Occupation attached as Schedule "A" hereto (the "Licence") Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister responsible for the *Land Act* granted to Vinco Holdings Ltd. a licence over all that unsurveyed Crown foreshore being part of the bed of Mara Lake and fronting on Lot 1 Sections 19 and 30 Township 21 Range 7 West of the 6th Meridian, Kamloops Division Yale District, Plan KAP86301 and containing 0.49 hectares, more or less (the "Lands"), for the term mentioned therein, for a commercial marina including the moorage of houseboats;

B. Pursuant to a Credit Offer from the Bank, dated November 10, 2010, the Bank agreed to make a loan of up to \$6,553,000.00 to the Borrower on the terms and conditions set out therein (the "Loan").

C. Under the terms of the Loan, the Borrower has agreed to provide the Bank with a Mortgage and Assignment of Rents over Lot 1 Sections 19 and 30 Township 21 Range 7 West of the 6th Meridian, Kamloops Division Yale District, Plan KAP86301, and a General Security Agreement securing all personal property of the business now owned (which includes among other things, inventory, equipment and receivables) and all personal property acquired in the future (the "Loan Agreements") as well as a charge over the Licence.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises and to secure the obligations and liability of the Borrower to the Bank relating to or arising out of the Loan and Loan Agreements and the covenants and warranties of the Borrower therein and herein, the Borrower demises, charges, and mortgages to the Bank its licenced right, title, interest and estate in all and singular the Lands except the last day of the term thereof TO HAVE AND TO HOLD the same unto the Bank from the date hereof for the unexpired term of the Licence save and except the last day thereof and together with any renewal, extension, replacement, or substitution thereof, save and except the last day thereof, subject to the provisions for cesser hereinafter contained.

1. PROVISIO FOR REDEMPTION

Provided that this Mortgage shall be void upon the due performance by the Borrower of its covenants hereunder and payment of the Obligations.

2. BORROWER RELEASES ITS INTEREST

The Borrower grants, mortgages, charges and releases to the Bank all its claims to its Licenced interest in the Lands, subject to the provisions hereof, excepting the reservation to the Borrower of the last day of the unexpired term of the Licence and of the last day of any renewal, extension, replacement or substitution of or for the Licence.

3. BORROWER'S REPRESENTATIONS

The Borrower covenants and represents to the Bank:

- (a) that it has good legal and beneficial title to its Licenced interest in the Lands;
- (b) that it has the right, capacity and authority to convey its Licenced interest in the Lands to the Bank;
- (c) that on default the Bank shall have possession of the Lands for the remainder of the term of the Licence free from all encumbrances, save any prior interest referred to herein and save the reservation to the Borrower referred to in paragraph 2 above;
- (e) that the Borrower has done no act or been guilty of any omission or laches whereby the Licence has become in any way impaired or invalid; and,
- (f) that the rent reserved in the Licence has been duly paid and the covenants therein to be performed by the Borrower have been duly performed up to the date hereof.

4. BORROWER'S COVENANTS

The Borrower covenants with the Bank:

- (a) that it will pay or cause to be paid to the Bank the principal, interest and other monies payable under this Mortgage or the Loan Agreements when due and observe the above proviso;
- (b) that it will execute such further assurance of its interest in the Lands as may be requisite;
- (c) that it will comply with all environmental laws, regulations and orders affecting the Lands and that it will not allow environmentally hazardous materials to be brought on or stored on the Lands or to allow the Lands to become or remain contaminated;
- (d) that it will abide by and fulfill all of the terms, conditions and covenants of this Mortgage.

5. INSURANCE

- (a) During the continuance of this Mortgage, and unless the Licence requires that the Lessor shall insure and keep insured any building upon the Lands, the Borrower shall:
 - (i) insure and keep insured any building now or hereafter erected on the Lands to its full insurable value against loss or damage by fire including Extended Coverage Endorsement;
 - (ii) cause the policy relating to the insurance called for above to be assigned to the Bank and also cause to be affixed to the policy a mortgage clause or a mortgage endorsement, as appropriate; and
 - (iii) pay any premium in connection with such insurance, to deliver evidence of payment forthwith upon each premium payment and deliver the said policy to the Bank, if it so requires.
- (b) If proceeds of any insurance required hereunder become payable, the Bank may, in its absolute discretion apply such proceeds to such part or parts of the Obligations as the Bank may see fit or the Bank may release any such insurance proceeds to the Borrower for the purpose of repairing, replacing or rebuilding, but any release of insurance proceeds to the Borrower shall not operate as a payment on account of the Obligations or in any way affect this Mortgage.
- (c) The Borrower will forthwith, on the happening of loss or damage to the Lands, notify the Bank thereof and furnish to the Bank at the Borrower's expense any necessary proof, and do any necessary act to enable the Bank to obtain payment of the insurance money, but nothing herein contained shall limit the Bank's right to submit to the insurer a proof of loss on its own behalf.
- (d) The Borrower hereby authorizes and directs the insurer under any of the insurance called for above to include the name of the Bank as a loss payee in any cheque or draft which may be issued with respect to a claim settlement under and by virtue of such insurance, and the production by the Bank to any such insurer of a certified copy of this Mortgage shall be its full and complete authority for so doing.
- (e) If default shall be made by the Borrower in the performance or observance of the covenants to insure herein, the Bank, without notice to the Borrower, may in its discretion and in the manner of its choice, maintain or effect such insurance coverage (or so much thereof as the Bank considers necessary for its protection) provided, however, that nothing herein shall make the Bank liable for failure to insure as herein set out.
- (f) In the event of the Borrower not maintaining insurance as required herein, the Bank may effect and maintain insurance which protects its own interest and not that of the Borrower.

6. TAXES

The Borrower shall promptly pay as and when due all taxes and deliver a receipt therefor to the Bank forthwith upon each payment. Notwithstanding the foregoing, if the Licence provides that the Landlord shall pay all or any part of the taxes, then the Borrower shall promptly deliver to the Bank a copy of a receipt therefor, or with respect to such part of the taxes as are to be paid by the Landlord, forthwith after the due date for the payment by the Landlord of the taxes or of any part thereof.

7. MAINTENANCE AND IMPROVEMENTS

- (a) The Borrower shall keep the Lands in good repair and condition.
- (b) The Borrower shall not permit or commit any act of waste on the Lands including, but not limited to, allowing any environmentally hazardous materials or waste to be kept, stored or spilled upon the Lands or not removed from the Lands.
- (c) The Bank may, at such time as the Bank may deem necessary and without the concurrence of any person, enter upon the Lands and may make any arrangement for completing the construction, repairing, or putting in order of any building or other improvement on the Lands, or for inspecting, appraising, taking care of, leasing, collecting the rent of and managing generally the Lands as the Bank may deem expedient.

8. BORROWER'S OBLIGATION UNDER PRIOR INTERESTS

- (a) If the Licence is subject to a prior mortgage or charge, the Borrower shall punctually pay as it becomes due any money payable under such prior mortgage;
- (b) The Borrower will observe, perform and carry out any term, covenant, provision and agreement contained in any prior charge upon the Licence and undertakes to indemnify and save harmless the Bank from and against any and all loss and liability thereunder;
- (c) Any default of payment of money due and payable under any prior charge, the Licence, or a head Licence, or in the observance, performance or carrying out of any term, covenant, provision and agreement therein contained, shall be a default hereunder.

9. ENLARGEMENT OF MORTGAGE

In the event that the Borrower, at any time, extends the size of the Lands or increases its interest in the Lands then this Mortgage shall become enlarged to be a mortgage of the increased size of the Lands or of the increased interest, as the case may be.

10. DISCHARGE

The Borrower shall pay to the Bank a fee to be fixed by the Bank for the preparation and execution, or the execution only, of any discharge or partial discharge of this Mortgage.

11. THE PRESERVATION OF THE LICENCED INTEREST

- (a) In the event of any renewal, extension, replacement or substitution of the Licence being created, the Borrower will immediately so advise the Bank and provide the Bank with particulars of the same as well as a true copy of the renewal, extension, replacement, or substitute instrument, and, when requested by the Bank, will execute such further instrument as may be required by the Bank.

- (b) The Borrower shall not surrender the Licence without the prior consent in writing of the Bank.
- (c) The Borrower shall not, during the continuance of this Mortgage, modify or assign the Licence or the reversion thereof.
- (d) The Borrower will well and faithfully observe and conform to and comply with each and every covenant, proviso and condition contained in the Licence, including the payment of the rent thereunder reserved, and will do no act or be guilty of any default which shall or which may cause the Licence to be forfeited or determined.
- (e) The Borrower will henceforth stand possessed of the Lands for the residue of the term granted by the Licence in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption as is hereby given to the Borrower with respect to the derivative term hereby granted. The Borrower hereby irrevocably appoints the Bank as the Borrower's attorney during the continuance of this Mortgage, and for and on behalf of the Borrower to assign the Licence and convey its Licenced interest in the Lands (including the reversion following the derivative term hereby granted) as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under a statutory power or the power of sale herein contained, to assign the Licence and convey its Licenced interest in the Lands including the said reversion, to the purchaser. The Bank, or other person for the time being entitled to the money hereby secured, may at any time, by deed, remove the Borrower or any other person from being a trustee of the Licence under the declaration of trust and on the removal of the Borrower, or any future trustee of the Licence, may, by deed, appoint a new trustee in the Borrower's place.
- (f) The Borrower shall, with respect to the Licence, at the request of the Bank, but at the cost, charge and expense of the Borrower, grant and assign unto the Bank, or whomsoever it may appoint, the last day of the term excepted and the last day of any renewal, extension, replacement or substitute thereof. Prior to such an assignment, in the event of the Bank making any sale under a statutory power or the power of sale herein contained, the Borrower shall stand seized and possessed of the Lands for the last day of the term excepted, and for the last day of any renewal, extension, replacement or substitution thereof, and of any right of renewal in trust for the purchaser.

12. MULTIPLE SECURITIES

Default under this Mortgage constitutes default under all security and obligations held by the Bank in relation to this or any other indebtedness of the Borrower to the Bank and default under such other security constitutes default hereunder.

13. NOTICE TO BORROWER

Any demand or notice herein referred to may be effectively given by the Bank by personal delivery thereof or by mailing such demand or notice by prepaid post to the Borrower at the address set out above, or at such other address as may be given in writing by the Borrower to the Bank. Delivery by fax transmission is deemed to be personal service and is deemed to be received on the day of transmission. Delivery by prepaid mail is deemed to be received 3 business days after mailing.

14. ACCELERATION

- (a) If any default shall at any time be made of or in the payment of the Obligations, or any part thereof, at the time and in the amount provided, or in payment of any taxes, or under the covenants to insure herein given, or if any default shall have occurred under or upon the

Licence, or, if any default shall have been made as to any other covenant, proviso, term or agreement herein contained, or if the Borrower breaches or commits an act of default under any other security provided by the Borrower to the Bank, or if the Borrower becomes bankrupt or insolvent or makes an assignment for the benefit of its creditors or makes a proposal or takes advantage of any provision of the *Bankruptcy and Insolvency Act* or any other legislation for the benefit of insolvent debtors, or if the Borrower conveys or sells or agrees to convey or sell its interest in the Lands without the consent of the Bank then and in every such case the Obligations, and every part thereof, at the option of the Bank, shall immediately become due and payable without notice in like manner and with like consequence and effect to all intents and purposes whatsoever as if the time for payment had fully come and expired, and the provisions relating to default under this Mortgage by the Borrower shall be as set out herein and the Borrower shall not be relieved from the consequences of default by payment of any money of which default of payment, if any, has been made and costs and charges related thereto.

- (b) In the event of enforcement of this Mortgage, or any other security provided by the Borrower, or in the event of acceleration of the Obligations as herein provided, the Bank may:
 - (i) take possession of the Lands;
 - (ii) appoint a receiver pursuant to the provisions of paragraph 19 herein of the Lands and or rents and other appropriate undertaking of the Borrower;
 - (iii) sell the Lands and other assets of the Borrower over which the Bank holds security;
 - (iv) collect the rents and benefits which accrue or arise from the Lands and other assets held as security by the Bank; and
 - (v) enforce this mortgage security and any other security granted to the Bank in accordance with the terms hereof and thereof.

15. CUMULATIVE RIGHTS OF BANK

- (a) The Bank in its sole discretion may realize upon this Mortgage and any other security provided by the Borrower or other persons in any order or concurrently whether such security is held by it at the date hereof or is provided at any time hereafter. No realization or exercise of any power or right hereunder or under any other security shall in any way prejudice any further realization or exercise until the Obligations have been satisfied in full.
- (b) The taking of a judgment on any covenant herein contained shall not operate as a merger of the said covenant, or affect the Bank's right to receive interest at the rate and time aforesaid.
- (c) This Mortgage shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract or security interest of any form held or which may hereafter be held by the Bank from the Borrower or from any other person.

16. NO OBLIGATION UPON BANK TO ADVANCE

None of the execution or the registration of the Mortgage or the advance of monies hereunder binds the Bank to make any advance or further advance.

17. BANK'S RIGHT TO PAY TAXES AND OTHER CHARGES

(a) The Bank may from time to time pay in whole or in part:

- (i) without taking or defending any action or proceeding to determine the rights or priorities of any claimant thereto, any lien (including a Builders' Lien), taxes, charge, encumbrance, government grant, cost of suit of matter relating to any such claim, in respect of the Lands;
- (ii) the costs of any solicitor or appraiser engaged by the Bank in respect of, or incidental to the taking, preparing, registration, assumption, modification, extension or release of this Mortgage and/or other security now or at any time hereafter securing in whole or in part the money hereby secured including the investigation, acquisition and perfection of the estate or title of the Borrower in the Lands and other property included in such other security;
- (iii) the costs or commission of any solicitor engaged by the Bank in enforcing the right of the Bank against any party liable for the money due under this Mortgage, or in defending, taking, recovering or keeping possession of the Lands, the collection or attempted collection of the Obligations, whether or not any action or judicial proceeding has been taken, and generally in any other proceeding or otherwise in relation to this Mortgage;
- (iv) the costs of any appraiser and any environmental investigator engaged by the Bank to effect any inspection, appraisal, investigation or environmental audit of the Lands and the cost of any environmental rehabilitation, removal, or repair necessary to protect, preserve or remediate the Lands, including any fine or penalty the Bank is obliged to incur by reason of any statute, order or direction by competent authority;
- (v) any money for rent or otherwise that may be due under the Licence, or which may be required to be paid to prevent a forfeiture of the Licence, or which may be required to be expended to otherwise rectify and make good any default under the terms of the Licence; and,
- (vi) any insurance premium, or other money (including any reasonable cost, charge, expense, allowance, and disbursement incurred or to be incurred by the Bank) required to make good any default of the Borrower in observing or performing any term of this Mortgage or the Loan Agreements (other than the covenant for payment of principal and interest), and the Bank is expressly authorized, at its option, to expend such money as may be required to make good such default.

(b) Any money paid by the Bank under paragraph 17 shall from the date of payment bear interest at the rate chargeable hereunder, shall be a charge on the Licenced interest of the Borrower in the Lands in favour of the Bank and be secured hereunder and shall be payable forthwith to the Bank.

18. POWER TO RELEASE LANDS

The Bank may release any part of the Lands at any time at its discretion, either with or without any consideration therefor, without responsibility therefor on any account, and without thereby releasing the Borrower from any covenant herein contained.

19. RECEIVER

- (a) If and whenever the Bank becomes entitled hereunder to enter into possession of the Lands it may, in its discretion, by writing appoint a Receiver of them or any part thereof and of the rent and profit thereof and from time to time remove any Receiver and appoint another in its stead and in making any such appointment the Bank shall be deemed to be the agent of the Borrower.
- (b) Such appointment may be made either before or after the Bank shall have entered into or taken possession of the Lands or any part thereof.
- (c) The Receiver may, in the discretion of the Bank, be vested with any power and discretion of the Bank.
- (d) The Bank may from time to time fix the remuneration of the Receiver and direct the payment thereof out of the proceeds of the receivership.
- (e) The Receiver shall, so far as concerns the responsibility for any act of omission by it, be deemed the agent of the Borrower and in no event the agent of the Bank, and the Bank in making or consenting to such appointment shall not incur any liability to the Receiver for its remuneration or otherwise howsoever.
- (f) Any money from time to time received by such Receiver shall be paid by it FIRSTLY in payment of any costs, charge and expense of and incidental to the appointment of the Receiver and the exercise by it of any power aforesaid including the reasonable remuneration of the Receiver and any outgoings properly paid by it, SECONDLY in or towards payment to the Bank of the Obligations with full power of appropriation to the Bank, and THIRDLY any surplus shall be paid to the Borrower.
- (g) The rights and powers conferred by this clause are in supplement and not in substitution for any right the Bank may from time to time possess.
- (h) The term "Receiver" as used in this paragraph includes, at the election of the Bank, a Receiver-Manager.

20. NO WAIVER OF BANK'S RIGHTS

No extension of time given by the Bank to the Borrower, or anyone claiming under it, shall in any way affect or prejudice any right of the Bank against the Borrower for the payment of the money hereby secured and, except as herein provided, any liability and obligation of the Borrower to the Bank shall survive the execution and registration of this Mortgage and shall in no way merge herewith and shall in all respects remain in full force and effect.

21. POSSESSION

Until default of any condition herein on the part of the Borrower to be performed, the Borrower shall have quiet possession of the Lands.

22. MULTIPLE OBLIGANTS

Whenever the term "Borrower" includes more than one person:

- (a) any covenant, liability, and obligation entered into or imposed on the Borrower herein shall be deemed to be joint and several;
- (b) each of the parties is in fact as between them (as each hereby solemnly declares) in the position of a principal debtor in respect of the Obligations and interest and notwithstanding any subsequent change in their position inter se and notice thereof given to the Bank shall for the benefit and protection of the Bank and for all purposes of this security remain in the position of a principal debtor hereunder and the Bank shall not be bound by or be under obligation to pay any attention to any such change or notice;
- (c) the Bank shall be at liberty to release or discharge any of the parties from the obligations of the Mortgage or to accept any compromise from or make any other arrangement with any of them or to release in whole or in part this Mortgage or any other security given to secure the Obligations without thereby prejudicing or affecting the right and remedy of the Bank against the remaining parties or security;
- (d) the Borrower agrees that it shall not be released nor shall its liability be in any way reduced by reason that the Bank has done or concurred in the doing of any thing whereby a surety would or might be released in whole or in part.

23. INTERPRETATION

- (a) Any paragraph title is inserted herein for convenience only, and shall not be taken into account or looked at for the purpose of interpreting and giving full effect to the true meaning and intent of any term of this Mortgage.
- (b) The division of this Mortgage into paragraphs and sub-paragraphs has likewise been made for the purpose of convenience and such division shall not, unless the express provisions of this Mortgage provide, or the context clearly require, be taken into account for the purpose of interpreting and giving full effect to the true meaning of any term of this Mortgage.
- (c) Any grant, covenant, proviso, and agreement, right, power, privilege, or liability contained in this Mortgage shall be read and held as made by, and with, and granted to, and imposed upon the respective parties hereto and their respective heirs, executors and administrators, successors and assigns as if the words "and its heirs, executors, administrators, successors and assigns" had been inscribed in all the necessary places.
- (d) Words importing the singular include the plural, and words importing the neuter gender include the feminine and masculine genders where the context or the parties so require.
- (e) Wherever in this Mortgage it is stated that the Borrower or Bank will or shall do or omit any act, then the Borrower or Bank shall be deemed to have covenanted with the Bank or Borrower, as the case may be, that such act shall be done or omitted, as the case may be.
- (f) Time is of the essence hereof.
- (g) The doctrine of consolidation shall apply to this Mortgage to the extent permitted by statute.
- (h) If an agreement is made to extend the term of repayment of this Mortgage and/or to increase the rate of interest accruing hereunder, then this Mortgage shall secure the interest payable under the said agreement as well as otherwise hereunder.

- (i) Any reference to a statute herein includes any amendment thereto and any statute intended to replace that statute.
- (j) No charge upon the Licenced interest of the Borrower in the Lands shall take effect, except as between the Borrower and the Bank, until the consent of the Lessor, if required by the terms of the Licence, has been given in the manner specified by the Licence or has been waived by the Lessor.

24. DEFINITIONS

- (a) "Costs" when used in relation to the fees of a solicitor means the cost and expense, chargeable as between a solicitor and his own client, of any solicitor engaged by the Bank and actually paid by it.
- (b) the "Lands" mean the real property described in Schedule "A" hereto and includes any building, fixture, common, way, profit, privilege, right, easement, and appurtenance belonging to or with the said real property, or any part thereof.
- (c) The "Licence" means the Licence described in Schedule "A" hereto and include, where the context so permits, any renewal, extension, replacement, or substitution thereof.
- (d) the "Obligations" means the principal, interest and other monies at any time and from time to time owing by the Borrower to the Bank under this Mortgage and the Loan Agreements.
- (e) "Taxes" includes any tax, rate, levy, charge, rent, utility charge, assessment, Statute Labour and other imposition whatsoever, whether Federal, Provincial, Municipal or other, that may already or may hereafter be rated, charged, assessed or imposed upon the Lands or on the Borrower in respect to the Lands.

EXECUTION:

Officer Signature(s)

Execution Date

Y M D

10 11

29

RICK PUSHOR
BARRISTER & SOLICITOR
#301-1665 ELLIS STREET
KELOWNA, BC V1Y 2B3
PHONE: 762-2108

Borrower(s) Signature(s)

VINCO HOLDINGS LTD.

by its authorized signatory

Alice Letang

Name: ALICE LETANG

Title: AUTHORIZED SIGNATORY

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

SCHEDULE "A"



LICENCE OF OCCUPATION

Licence No.:

344093

File No.: 3404157

Disposition No.: 875388

THIS AGREEMENT is dated for reference June 8, 2008 and is made under the *Land Act*.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

VINCO HOLDINGS LTD.
PO Box 69
Sicamous, BC V0E 2V0

(the "Licensee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"Agreement" means this licence of occupation;

"Ancillary Marine Use" means boathouses, fuel docks, marina ways (portion submerged at mean high tide), launching ramps (portion submerged at high tide), boat sales dock, boat rentals dock and boat charters dock where they are below the mean water mark and not on fill;

"Commencement Date" means June 8, 2008;

"disposition" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"Fees" means the fees set out in Article 3;

"Improvements" means all buildings, structures, equipment, improvements and marine docking, moorage, storage and launching facilities for the accommodation, moorage, storage, launching, maintenance and minor repair of marine vessels (including bulkheads, groins, breakwaters and floating booms) that are made, constructed, erected, placed or installed on the Land at any time during the term of this Agreement, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs to any of them;

"Land" means that part or those parts of the following described land shown outlined by bold line on the schedule attached to this Agreement entitled "Legal Description Schedule":

All that unsurveyed Crown foreshore being part of the bed of Mara Lake and fronting on Lot 1 Sections 19 and 30 Township 21 Range 7 West of the 6th Meridian, Kamloops Division Yale District, Plan KAP86301 and containing 0.49 hectares, more or less,

except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*);

"Land Value" means for the first five years of the Term the value for the Land established by us prior to the Commencement Date which value shall thereafter be subject to review by us prior to the sixth anniversary of the Commencement Date and thereafter at five year intervals during the remainder of the Term;

"Linear Footage of Moorage Space" means: the linear footage of all moorage space within the Land, whether open or covered by a boathouse, together with the linear footage of all improvements used for an Ancillary Marine Use;

"Month to Month Moorage Charge per Linear Footage" means:

- (a) the standard monthly linear footage rate that you charge to your customers for the use of moorage space; or
- (b) if you do not have a standard monthly linear footage rate but charge on a prepaid annual linear footage basis, the annual rate will be converted to an equivalent monthly rate; or
- (c) if we determine that you charge a membership fee or any other charge which is not solely a linear footage charge, we may determine a month to month moorage charge per linear footage taking into consideration the rates charged by commercial marinas which charge on a linear footage basis that we may determine to be comparable having regard to location and other factors;

"Moorage Fee Discount" means the following:

0.00

"Non-Moorage Fee Discount" means the following:
0.00

"Potential Gross Income From Moorage" means for any particular year of the Term, the amount calculated as follows:

$$A \times B \times C$$

where:

A = the amount of Linear Footage of Moorage Space on the Land;

B = the Month to Month Moorage Charge per Linear Footage; and

C = the number of months the operation was open for business in that year;

"Rate" means 4.0%;

"Ratio" during each year of the Term means the percentage fixed by us in our sole discretion.

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

"Security" means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

"Term" means the period of time set out in section 2.2;

"we", "us" or "our" refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **"the parties"**; and

"you" or "your" refers to the Licensee.

1.2 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.

1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.

- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 All provisions of this Agreement in our favour and all of our rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for commercial marina, and you acknowledge this licence of occupation does not

grant you exclusive use and occupancy of the Land.

- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 10th anniversary of that date, or such earlier date provided for in this Agreement.

ARTICLE 3 - FEES

- 3.1 You will pay to us:

- (a) for the first year of the Term Fees of \$1,634.57 payable in advance, on the Commencement Date; and
- (b) during the balance of the Term the sum of each of the annual Fees determined under sections 3.2 and 3.3 of this Article or \$500, whichever is the greater, payable in advance beginning on the first anniversary of the Commencement Date and thereafter on each anniversary of that date.

- 3.2 The annual Fees payable for moorage and Ancillary Marine Use for any particular year shall be an amount equivalent to the product of the Potential Gross Income from Moorage for the previous year multiplied by the Rate, less the Moorage Fee Discount, if any.

- 3.3 The annual Fees payable for non-moorage uses shall be an amount equivalent to the product of the Land Value multiplied by the Ratio, less the Non-Moorage Fee Discount, if any.

- 3.4 You will, in each and every year during the Term within 60 days of an anniversary of the Commencement Date deliver to us a Statutory Declaration, or such other document that we may approve from time to time to (a "statement") for the purpose of verifying the information necessary to calculate the Fees payable under section 3.2. We may give you notice from time to time specifying the form of the statement, the information to be set out in the statement and any supporting documents that you will be required to provide with the statement.

- 3.5 In the event you deliver the Statutory Declaration referred to in section 3.4 of this Article to us before the deadline referred to in section 3.4, we will, not later than 15 days before the anniversary of the Commencement Date during each year of the Term, give written notice to you specifying the annual Fees payable under section 3.4 for the immediately succeeding year of the Term.

- 3.6 If we do not give you notice under section 3.5 of this Article, the annual Fees shall be equal to the annual Fees calculated or in force during the immediately preceding year of the term.

- 3.7 If you fail to deliver the Statutory Declaration referred in section 3.4 of this Article to us before the deadline referred to in section 3.4 we may:

- (a) enter upon the Land and do such things as are necessary to determine the information required in section 3.4 of this Article; and
 - (b) based on the information determined under subsection (a) above, set the annual Fees, retroactive to the last anniversary date of the Commencement Date.
- 3.8 The annual Fees specified in a notice given under section 3.5 shall constitute conclusive evidence of the annual Fees payable for the year of the Term specified in the notice.

ARTICLE 4 - COVENANTS

4.1 You must

- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by anyone you permit to use the Land, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
- (f) not construct, place, anchor, secure or affix any Improvement in, on, to or into the Land

except as necessary for the purposes set out in section 2.1 and, despite those purposes, you will not construct, place, anchor, secure or affix anything on or to the Land that may interfere with the riparian right of access of any person over the Land without first obtaining from that person a statutory right of way, in registrable form and in our favour, by which that person allows us to curtail his or her riparian right of access over the Land;

- (g) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (h) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not cut or remove timber on or from the Land without
 - (i) our prior written consent, and
 - (ii) being granted the right under the *Forest Act* to harvest Crown timber on the Land;
- (k) dispose of raw sewage and refuse only in accordance with the requirements and regulations of appropriate federal and provincial agencies;
- (l) store bulk hazardous petroleum products and other toxic substances in accordance with the provisions of the *Environmental Management Act*;
- (m) not use construction materials containing toxic substances;
- (n) not without prior written consent from us
 - (i) deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land;
- (o) not alter or add to any Improvement without our prior written consent;
- (p) not construct a fence, bulkhead, groin, breakwater, floating boom or any structure by

another name which acts in a like manner, on the Land, without the prior written consent of the Owner;

- (q) maintain and operate on the Land equipment and facilities necessary to prevent the discharge of petrochemicals by any person on the Land into body of water, and take all steps required to prevent such discharge;
- (r) store and maintain on the Land sufficient absorptive materials to completely clean up all petrochemical spills, and take such steps as are necessary to clean up all petrochemical spills;
- (s) limit houseboat occupancy to overnight stays for clients departing to, or returning from houseboat vacations during the operating season;
- (t) ensure houseboats moored at this structure are not used for staff housing or as residences;
- (u) ensure the dock structure meets Ministry of Environment Best Management practices for small boat moorage within 2 years of the commencement date;
- (v) ensure improvements on the Land do not restrict public access along the foreshore;
- (w) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, provided that in regard to our inspection of the Improvements we take reasonable steps to minimize any disruption of your operations;
- (x) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of
 - (i) your breach, violation or nonperformance of a provision of this Agreement, and
 - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (y) on the termination of this Agreement,
 - (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,

- (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (v) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to our satisfaction, but if you are not directed or permitted to remove an Improvement under paragraph (iv), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person to do anything you are restricted from doing under this Article.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) this Agreement is subject to
 - (i) all subsisting dispositions and subsisting grants to or rights of any person made or acquired under the *Coal Act*, *Forest Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Wildlife Act* or *Water Act*, or any extension or renewal of the same, whether or not you have actual notice of them; and
 - (ii) the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (c) without limiting subsection 4.1(x), you must indemnify and save us and our servants, employees and agents harmless from and against all claims, actions, causes of action,

losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right of any person made or acquired under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act or Water Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect), or any extension or renewal of the same, whether or not you have actual notice of them, and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand;

- (d) you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your rights under this Agreement and the rights of any person under a disposition or under a subsisting grant to or right made or acquired under the enactments referred to in subsection (c), and you acknowledge that this Agreement and your rights under this Agreement are subject to those grants and rights referred to in subsection (c) whether or not you have actual notice of them.
- (e) we may make other dispositions of or over the Land;
- (f) you will make no claim for compensation, in damages or otherwise, in respect of a disposition made under subsection (e), where such disposition does not materially affect the exercise of your rights under this Agreement;
- (g) subject to subsection (f), all of your costs and expenses, direct or indirect, that arise out of any lawful interference with your rights under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles reserved to us in subsections (b) and (e) will be borne solely by you;
- (h) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any lawful interference with your rights under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (b) and (e);
- (i) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (j) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(y)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(y)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(y)(iii); and

- (k) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

6.1 On the Commencement Date, you will deliver to us security in the amount of \$1,000.00 which will

- (a) guarantee the performance of your obligations under this Agreement;
- (b) be in the form required by us; and
- (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.

6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.

6.3 We may use the Security for the payment of any costs and expenses incurred by us to perform any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to

- (a) change the form or amount of the Security; and
- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, effect and keep in force during the Term the following insurance with insurers licensed to do business in Canada:
- (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 For the purpose of section 7.1, if you are a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you submit to us a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land or other similar type of investigation of the Land.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
 - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
 - (c) if you fail to maintain in good standing any disposition issued by us to you for the use and occupation of Crown land;
 - (d) if you

- (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (e) if you are a corporation,
- (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (f) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (g) if this Agreement is taken in execution or attachment by any person; or
- (h) if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you 60 days' written notice of such requirement or opinion;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF AGRICULTURE AND LANDS
3rd Floor, 145-3rd Ave.
Kamloops, BC V2C 3M1;

to you

VINCO HOLDINGS LTD.
PO Box 69
Sicamous, BC V0E 2V0;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is

required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and

- (b) you diligently attempt to remove the delay.

11.6 You agree with us that

- (a) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (b) nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

11.7 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA
by the minister responsible for the *Land Act*
or the minister's authorized representative



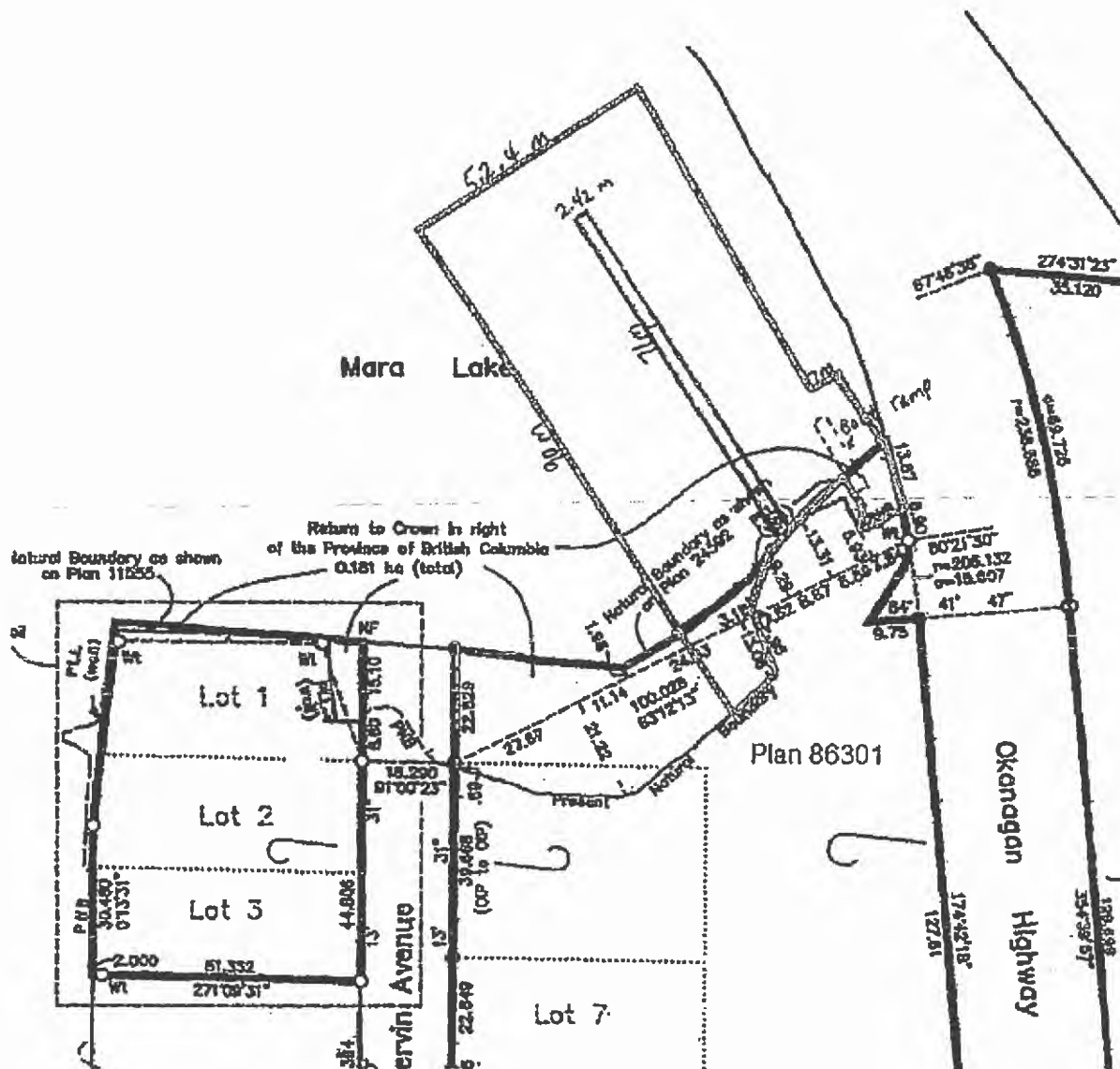
Minister responsible for the *Land Act*
or the minister's authorized representative

SIGNED on behalf of VINCO HOLDINGS LTD.
by a duly authorized signatory


Authorized Signatory

LEGAL DESCRIPTION SCHEDULE

All that unsurveyed Crown foreshore being part of the bed of Mara Lake and fronting on Lot 1 Sections 19 and 30 Township 21 Range 7 West of the 6th Meridian, Kamloops Division Yale District, Plan KAP86301 and containing 0.49 hectares, more or less,



This is **Exhibit "N"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CA M T S', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



8100 95/12 (Computer Generated)
For use in PPSA jurisdictions only

Canadian Imperial Bank of Commerce
328 Bernard Avenue
Kelowna, B.C. V1Y 6N5,

Branch

SECURITY AGREEMENT

For valuable consideration, the undersigned (the "Customer") agrees with **Canadian Imperial Bank of Commerce ("CIBC")** as follows:

1. **Grant of Security.** The Customer mortgages, charges and assigns to CIBC, and grants to CIBC, and CIBC takes, a Security Interest in the property described in the following paragraph or paragraphs of this section (as applicable in accordance with the NOTE appearing at the end of this section), and in all property described in any schedules, documents or listings that the Customer may from time to time sign and provide to CIBC in connection with this Agreement, and in all present and future Accessions to, and all Proceeds of, any such property (collectively, the "Collateral") as a general and continuing collateral security for the due payment and performance of the Liabilities:
☐ (a) **Specific Personal Property:** the Personal Property described in Schedule A.
☒ (b) **All Personal Property:** all of the Customer's present and after-acquired undertaking and Personal Property (including any property that may be described in Schedule A).
☐ (c) **All Real Property:** all of the Customer's present and after-acquired real property (including any property that may be described in Schedule A), together with all buildings placed, installed or erected on any such property, and all fixtures.

NOTE: Check appropriate box or boxes to indicate which of paragraphs (a), (b) or (c) are to apply. If no box is checked off, paragraph (b) will apply.

2. **Governing Law.** This Agreement is governed by the laws of British Columbia.

ADDITIONAL TERMS AND CONDITIONS. THE ADDITIONAL TERMS AND CONDITIONS (INCLUDING ANY SCHEDULES) ON THE FOLLOWING PAGES FORM PART OF THIS AGREEMENT.

The Customer has signed this Agreement on November 29, 2010.

WATERWAY HOUSEBOATS LTD.

Customer's name in full

c/o 3rd Flr., 1665 Ellis Street

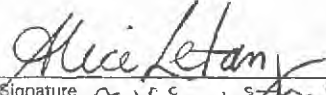
Customer's street address

Kelowna, B.C. V1Y 2B3

City/Town, Province and Postal Code

Authorized Signatory:

~~JOHN GILBERT VINJE, President~~


Signature ALICE LETAN
VICE PRESIDENT

Note: If the Customer is a corporation, no witness is needed. The office (such as "President" or "Secretary") of the person signing should be noted below that person's signature.

FOR INDIVIDUALS ONLY, record the following information:				
First and second names in full; surname	Birth Date*		Sex	
	Month	Day	M/F	

For Alberta, Ontario, Saskatchewan and the Yukon, record: day/month/year.

For British Columbia, Manitoba, New Brunswick, and Nova Scotia record: year/month/day.

Schedule A

The following is a description of the property in the Collateral (*describe personal property by item or kind; if space is insufficient, use a separate sheet*):

Schedule B

The following are the Places of Business (*if space is insufficient, use a separate sheet*):

01 Mervyn Rd Sicamous B.C. V0E 2V0

ADDITIONAL TERMS AND CONDITIONS

3. **Places of Business.** The Customer represents and warrants that the locations of all existing Places of Business are specified in Schedule B. The Customer will promptly notify CIBC in writing of any additional Places of Business as soon as they are established. Subject to section 5, the Collateral will at all times be kept at the Places of Business, and will not be removed without CIBC's prior written consent.
4. **Collateral Free of Charges.** The Customer represents and warrants that the Collateral is, and agrees that the Collateral will at all times be, free of any Charge or trust except in favour of CIBC or incurred with CIBC's prior written consent. CIBC may, but will not have to, pay any amount or take any action required to remove or redeem any unauthorized Charge. The Customer will immediately reimburse CIBC for any amount so paid and will indemnify CIBC in respect of any action so taken.
5. **Use of Collateral.** The Customer will not, without CIBC's prior written consent, sell, lease or otherwise dispose of any of the Collateral (other than Inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business). All Proceeds of the Collateral (including among other things all amounts received in respect of Receivables), whether or not arising in the ordinary course of the Customer's business, will be received by the Customer as trustee for CIBC and will be immediately paid to CIBC.
6. **Insurance.** The Customer will keep the Collateral insured to its full insurable value against loss or damage by fire and such other risks as are customarily insured for property similar to the Collateral (and against such other risks as CIBC may reasonably require). At CIBC's request, all policies in respect of such insurance will contain a loss payable clause, and if the Collateral includes real property will contain a mortgage clause, in favour of CIBC and in any event the Customer assigns all proceeds of insurance on the Collateral to CIBC. The Customer will, from time to time at CIBC request, deliver such policies (or satisfactory evidence of such policies) to CIBC. If the Customer does not obtain or maintain such insurance, CIBC may, but will not have to, do so. The Customer will immediately reimburse CIBC for any amount so paid. The Customer will promptly give CIBC written notice of any loss or damage to all or any part of the Collateral.
7. **Information and Inspection.** The Customer will from time to time immediately give CIBC in writing all information requested by CIBC relating to the Collateral, the Places of Business, and the Customer's financial or business affairs. The Customer will promptly advise CIBC of the Serial Number, model year, make and model of each Serial Number Good at any time included in the Collateral that is held as Equipment, including in circumstances where the Customer ceases holding such Serial Number Good as Inventory and begins holding it as Equipment. CIBC may from time to time inspect any Books and Records and any Collateral, wherever located. For that purpose CIBC may, without charge, have access to each Place of Business and to all mechanical or electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved. The Customer authorizes any Person holding any Books and Records to make them available to CIBC, in a readable form, upon request by CIBC.
8. **Receivables.** If the Collateral includes Receivables, CIBC may advise any Person who is liable to make any payment to the Customer of the existence of this Agreement. CIBC may from time to time confirm with such Persons the existence and the amount of the Receivables. Upon Default, CIBC may collect and otherwise deal with the Receivables in such manner and upon such terms as CIBC considers appropriate.
9. **Receipts Prior to Default.** Until Default, all amounts received by CIBC as Proceeds of the Collateral will be applied on account of the Liabilities in such manner and at such times as CIBC may consider appropriate or, at CIBC's option, may be held unappropriated in a collateral account or released to the Customer.
10. **Default.**
 - (1) **Events of Default.** The occurrence of any of the following events or conditions will be a Default:
 - (a) the Customer does not pay any of the Liabilities when due;
 - (b) the Customer does not observe or perform any of the Customer's obligations under this Agreement or any other agreement or document existing at any time between the Customer and CIBC;
 - (c) any representation, warranty or statement made by or on behalf of the Customer to CIBC is untrue in any material respect at the time when or as of which it was made;
 - (d) the Customer ceases or threatens to cease to carry on in the normal course the Customer's business or any material part thereof;
 - (e) if the Customer is a corporation, there is, in CIBC's reasonable opinion, a change in effective control of the Customer, or if the Customer is a partnership, there is a dissolution or change in the membership of the partnership;
 - (f) the Customer becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under the Bankruptcy Act (Canada) or similar legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Customer; or, if the Customer is a corporation, steps are taken under any legislation by or against the Customer seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;

- (g) a Receiver, trustee, custodian or other similar official is appointed in respect of the Customer or any of the Customer's property;
 - (h) the holder of a Charge takes possession of all or any part of the Customer's property, or a distress, execution or other similar process is levied against all or any part of such property; or
 - (i) CIBC, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy.
- (2) **Rights upon Default.** Upon Default, CIBC and a Receiver, as applicable, will to the extent permitted by law have the following rights.
- (a) **Appointment of Receiver.** CIBC may by instrument in writing appoint any Person as a Receiver of all or any part of the Collateral. CIBC may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by CIBC will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Customer's agent. CIBC may from time to time fix the Receiver's remuneration and the Customer will pay CIBC the amount of such remuneration. CIBC will not be liable to the Customer or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.
 - (b) **Dealings with the Collateral.** CIBC or a Receiver may take possession of all or any part of the Collateral and retain it for as long as CIBC or the Receiver considers appropriate, receive any rents and profits from the Collateral, carry on (or concur in carrying on) all or any part of the Customer's business or refrain from doing so, borrow on the security of the Collateral, repair the Collateral, process the Collateral, prepare the Collateral for sale, lease or other disposition, and sell or lease (or concur in selling or leasing) or otherwise dispose of the Collateral on such terms and conditions (including among other things by arrangement providing for deferred payment) as CIBC or the Receiver considers appropriate. CIBC or the Receiver may (without charge and to the exclusion of all other Persons including the Customer) enter upon any Place of Business.
 - (c) **Realization.** CIBC or a Receiver may use, collect, sell, lease or otherwise dispose of, realize upon, release to the Customer or other Persons and otherwise deal with, the Collateral in such manner, upon such terms (including among other things by arrangement providing for deferred payment) and at such times as CIBC or the Receiver considers appropriate. CIBC or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Customer or otherwise.
 - (d) **Application of Proceeds After Default.** All Proceeds of Collateral received by CIBC or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration and other expenses of enforcing CIBC's rights under this Agreement), Charges, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by CIBC or the Receiver to preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Charges on the Collateral ranking in priority to any Charge created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as CIBC considers appropriate and thereafter will be accounted for as required by law.
- (3) **Other Legal Rights.** Before and after Default, CIBC will have, in addition to the rights specifically provided in this Agreement, the rights of a secured party under the PPSA, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon or merge in any other right, and one or more of such rights may be exercised independently or in combination from time to time.
- (4) **Deficiency.** The Customer will remain liable to CIBC for payment of any Liabilities that are outstanding following realization of all or any part of the Collateral.
11. **CIBC not Liable.** CIBC will not be liable to the Customer or any other Person for any failure or delay in exercising any of its rights under this Agreement (including among other things any failure to take possession of, collect, or sell, lease or otherwise dispose of, any Collateral). None of CIBC, a Receiver or any agent of CIBC (including, in Alberta, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Chattel Paper, Securities or Instrument in possession of CIBC, a Receiver or CIBC's agent.
12. **Charges and Expenses.** The Customer agrees to pay on demand all costs and expenses incurred (including among other things legal fees on a solicitor and client basis) and fees charged by CIBC in connection with obtaining or discharging this Agreement or establishing or confirming the priority of the Charges created by this Agreement or by law, compliance with any demand by any Person under the PPSA to amend or discharge any registration relating to this Agreement, and by CIBC or any Receiver in exercising any remedy under this Agreement (including among other things preserving, repairing, processing, preparing for disposition and disposing of the Collateral by sale, lease or otherwise) and in carrying on the Customer's business. All such amounts will bear interest from time to time at the highest interest rate then applicable to any of the

Liabilities, and the Customer will reimburse CIBC upon demand for any amount so paid.

13. **Further Assurances.** The Customer will from time to time immediately upon request by CIBC take such action (including among other things the signing and delivery of financing statements and financing change statements, other schedules, documents or listings describing property included in the Collateral, further assignments and other documents, and the registration of this Agreement or any other Charge against any of the Customer's real property) as CIBC may require in connection with the Collateral or as CIBC may consider necessary to give effect to this Agreement. If permitted by law, the Customer waives the right to sign or receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms any registration of a financing statement or financing change statement, relating to this Agreement. The Customer irrevocably appoints the Manager or the Acting Manager from time to time of CIBC's branch specified on the first page of this Agreement as the Customer's attorney (with full powers of substitution and delegation) to sign, upon Default, all documents required to give effect to this section. Nothing in this section affects the right of CIBC as secured party, or any other Person on CIBC's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as CIBC or such other Person considers appropriate.
14. **Dealings by CIBC.** CIBC may from time to time increase, reduce, discontinue or otherwise vary the Customer's credit facilities, grant extensions of time and other indulgences, take and give up any Charge, abstain from taking, perfecting or registering any Charge, accept compositions, grant releases and discharges and otherwise deal with the Customer, customers of the Customer, guarantors and others, and with the Collateral and any Charges held by CIBC, as CIBC considers appropriate without affecting the Customer's obligations to CIBC or CIBC's rights under this Agreement.

15. **Definitions.** In this Agreement:

"Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Proceeds", "Purchase-Money Security Interest" and "Security Interest" have the respective meanings given to them in the PPSA.

"Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording, evidencing or relating to the Collateral to which the Customer (or any Person on the Customer's behalf) has access.

"Charge" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, financial lease, title retention agreement or arrangement, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.

"Consumer Goods" has the meaning given to it in the PPSA, except that, if this Agreement is governed by the laws of the Yukon, it does not include special consumer goods as that term is defined in the Yukon PPSA.

"Default" has the meaning set out in subsection 10(1).

"Liabilities" means all present and future indebtedness and liability of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Customer to CIBC, wherever and however incurred and any unpaid balance thereof.

"Money" has the meaning given to it in the PPSA or, if there is no such definition, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency.

"Person" means any natural person or artificial body (including among others any firm, corporation or government).

"Personal Property" means personal property and includes among other things Inventory, Equipment, Receivables, Books and Records, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles (including intellectual property), Money, and Securities, and includes all Accessions to such property.

"Place of Business" means a location where the Customer carries on business or where any of the Collateral is located (including any location described in Schedule B).

"PPSA" means the legislation that applies in the province or territory noted in section 2 of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation) as follows: in the case of Ontario, the Personal Property Security Act, 1989; in the case of Alberta, British Columbia, Manitoba, Prince Edward Island, Saskatchewan and the Yukon Territory, the Personal Property Security Act; and in the case of any other province or territory, such legislation as deals generally with Charges on personal property.

"Receivables" means all debts, claims and choses in action (including among other things Accounts and Chattel Paper) now or

in the future due or owing to or owned by the Customer.

"Receiver" means a receiver or a receiver and manager.

"Securities" has the meaning given to it in the PPSA or, if there is no such definition and the PPSA defines "security" instead, it means the plural of that term.

"Serial Number" means the number that the Person who manufactured or constructed a Serial Number Good permanently marked or attached to it for identification purposes or, if applicable, such other number as the PPSA stipulates as the serial number or vehicle information number to be used for registration purposes of such Serial Number Good.

"Serial Number Good" means a motor vehicle, trailer, mobile home, aircraft airframe, aircraft engine or aircraft propeller, boat or an outboard motor for a boat.


16. **General.**

- (1) **Reservation of the Last Day of any Lease.** The Charges created by this Agreement do not extend to the last day of the term of any lease or agreement for lease; however, the Customer will hold such last day in trust for CIBC and, upon the exercise of CIBC of any of its rights under this Agreement following Default, will assign such last day as directed by CIBC.
- (2) **Attachment of Security Interest.** The Security Interests created by this Agreement are intended to attach (i) to existing Collateral when the Customer signs this Agreement, and (ii) to Collateral subsequently acquired by the Customer, immediately upon the Customer acquiring any rights in such Collateral. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.
- (3) **Purchase-Money Security Interest.** If CIBC gives value for the purpose of enabling the Customer to acquire rights in or to any of the Collateral, the Customer will in fact apply such value to acquire those rights (and will provide CIBC with such evidence in this regard as CIBC may require), and the Customer grants to CIBC, and CIBC takes, a Purchase-Money Security Interest in such Collateral to the extent that the value is applied to acquire such rights. A certificate or affidavit of any of CIBC's authorized representatives is admissible in evidence to establish the amount of any such value.
- (4) **Description of Collateral in Schedule A.** The fact that box (b) or box (c) of section 1 has been checked without there being any property described in Schedule A does not affect the nature or validity of CIBC's security in the Collateral.
- (5) **Entire Agreement.** CIBC has not made any representation or undertaken any obligation in connection with the subject matter of this Agreement other than as specifically set out in this Agreement, and in particular nothing contained in this Agreement will require CIBC to make, renew or extend the time for payment of any loan or other credit accommodation to the Customer or any other Person.
- (6) **Additional Security.** The Charges created by this Agreement are in addition and without prejudice to any other Charge now or later held by CIBC. No Charge held by CIBC will be exclusive of or dependent upon or merge in any other Charge, and CIBC may exercise its rights under such Charges independently or in combination.
- (7) **Joint and Several Liability.** If more than one Person signs this Agreement as the Customer, the obligations of such Persons will be joint and several.
- (8) **Severability; Headings.** Any provision of this Agreement that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of this Agreement. The headings in this Agreement are for convenience only and do not limit or extend the provisions of this Agreement.
- (9) **Interpretation.** When the context so requires, the singular will be read as the plural, and vice versa.
- (10) **Copy of Agreement.** The Customer acknowledges receipt of a copy of this Agreement.
- (11) **Waivers.** If this Agreement is governed by the laws of Saskatchewan and the Customer is a corporation, the Customer agrees that The Limitation of Civil Rights Act, The Land Contracts (Actions) Act and Part IV (excepting only section 46) of The Saskatchewan Farm Security Act do not apply insofar as they relate to actions as defined in those Acts, or insofar as they relate to or affect this Agreement, the rights of CIBC under this Agreement or any instrument, Charge, security agreement or other document of any nature that renews, extends or is collateral to this Agreement.
- (12) **Notice.** CIBC may send to the Customer, by prepaid regular mail addressed to the Customer at the Customer's address last known to CIBC, copies of any documents required by the PPSA to be delivered by CIBC to the Customer. Any document mailed in this manner will be deemed to have been received by the Customer upon the earlier of actual receipt by the Customer and the expiry of 10 days after the mailing date. A certificate or affidavit of any of CIBC's authorized

representatives is admissible in evidence to establish the mailing date.

- (13) **Enurement; Assignment.** This Agreement will enure to the benefit of and be binding upon (i) CIBC, its successors and assigns, and (ii) the Customer and the Customer's heirs, executors, administrators, successors and permitted assigns. The Customer will not assign this Agreement without CIBC's prior written consent.

This is **Exhibit "O"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CAP M. J. S.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



RECEIVED JAN 27 2012

189-2008/05
(All provinces except Quebec)
Page 1 of 3

Assignment and Postponement of Claim (the "Agreement")

Tr. 84173 595 Bay St., 5th Floor, Toronto, Ontario M5G 2C2

Bank Office (insert transit, mailing address and postal code)

For valuable consideration, and in connection with dealings between Canadian Imperial Bank of Commerce ("CIBC") and Vinco Holdings Ltd. (the "Customer"), I, the undersigned grantor, agree with CIBC as follows:

1. **Assignment.** I assign to CIBC all present and future debts and liabilities which are or will be owing to me (my "Claims") by the Customer.
2. **Postponement.** I postpone my Claims to CIBC's claims against the Customer.
3. **Money, etc. held in trust.** If I receive any money or other property in payment of my Claims, I will hold it in trust for, and immediately pay it to, CIBC.
4. **My Liability.** My liability under this Agreement is:
 - a) ☒ unlimited.
 - b) ☐ limited to the principal sum of Cdn\$ _____ plus interest (including compound interest) from the date of CIBC's demand for payment upon me or the Customer at the rates (and in the currency) applicable to the corresponding Customer's liabilities.

Note: If neither box a) nor box b) is checked off, or if both are checked off, or if box b) is checked off but no figure is inserted in the blank, then box a) alone will be considered to have been checked off.
5. **Dealing with Claims.** I will not do any of the following without CIBC's prior written consent:
 - i) release or withdraw any of my Claims,
 - ii) assign any of my Claims to any person other than CIBC,
 - iii) permit any of my Claims to lapse under any statute of limitations, or
 - iv) ask for or accept any security, negotiable paper or other evidence of my Claims.
6. **Governing Law.** This Agreement is governed by the laws of British Columbia (without reference to the choice of law rules). I irrevocably agree to submit to the non-exclusive jurisdiction of its courts.
7. **Copy Received.** I acknowledge having received a copy of this Agreement.

Note: The "Additional Terms and Conditions of this Agreement" on Page 2 and on any attached Schedules form part of this Agreement.

<p><u>DONALD PRESCOTT</u> _____ Witness Name (Record in full)</p> <p>X <u>[Signature]</u> _____ Witness Signature</p> <p>_____ Witness Name (Record in full)</p> <p>X _____ Witness Signature</p>	<p><u>P.O. Box 3006, 375 Silver Queen Road</u> _____ Grantor's Address</p> <p><u>Vernon, B.C. V1B 3M1</u> _____ City/Town, Province and Postal Code</p> <p>_____ Grantor's Address</p> <p>_____ City/Town, Province and Postal Code</p>	<p>Dated <u>January 24, 2012</u></p> <p><u>John Vinje</u> _____ Name</p> <p>X <u>[Signature]</u> _____ Signature</p> <p>_____ Name</p> <p>X _____ Signature</p>
---	---	---

Complete the box below if it is necessary to register under PPSA

For Individuals only, record the following information:

First and second names in full; surname	Birth Date*			Sex M/F
	Year	Month	Day	
John Gilbert Vinje	1956	03	28	M

*For Alberta, Ontario, Saskatchewan and Yukon, record: Day/Month/Year

CONFIDENTIAL

Assignment and Postponement of Claim (the "Agreement")

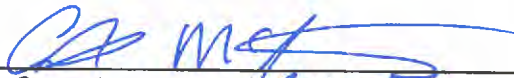
*For all other provinces and territories, record: Year/Month/Day

Assignment and Postponement of Claim (the "Agreement")

Additional Terms and Conditions of this Agreement

8. **Absolute Obligation.** My obligation under this Agreement is absolute and unconditional. It will not be limited or reduced, nor will CIBC be responsible or owe any duty (as a fiduciary or otherwise) to me, nor will CIBC's rights under this Agreement be prejudiced by the existence or occurrence (with or without my knowledge or consent) of any event whatsoever.
9. **Payment on demand.** CIBC may at any time demand that the Customer pay to CIBC the amount of my Claims.
10. **Notice by CIBC.** Any notice to me under this Agreement will be valid if mailed prepaid first class mail to my last known address as disclosed in CIBC's records.
11. **Bankruptcy, etc. of the Customer.** If the Customer becomes bankrupt or insolvent or CIBC files any claim for payment with any trustee or receiver, CIBC may require that I will immediately pay to CIBC any money or other property that the Customer has paid to me in respect of my Claims.
12. **Further Documents.** I will from time to time immediately, upon request by CIBC, take any action (including signing and delivering financing statements, financing change statements, statements of claim, proofs of claim, assignments or other documents) as CIBC may require in connection with this Agreement or as CIBC may consider necessary to give effect to this Agreement.
13. **Further Assurances.** If permitted by law, I waive the right to sign or receive a copy of any financing statement or financing change statement, or any statement issued by any registry that confirms any registration of a financing statement or financing change statement, relating to this Agreement.
14. **Termination.** I may discontinue further obligations to CIBC under this Agreement by written notice to the above-noted Bank Office. I will, however, continue to be liable under this Agreement in connection with any of my Claims existing as of the 30th day after CIBC receives my notice.
15. **Statement conclusive.** Except for demonstrable errors or omissions, the amount appearing due in any account stated or settled between CIBC and the Customer will be conclusive as to that amount being due.
16. **General.** Any provision of this Agreement that is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. This Agreement is in addition and without prejudice to any security of any kind now or in the future held by CIBC.
17. **Definitions.** In this Agreement:
 - a) "I", "me" and "my" mean the Person who has signed this Agreement and if two or more Persons sign, each of them; and
 - b) "Person" includes a natural person, personal representative, partnership, corporation, association, organization, estate, trade union, church or other religious organization, syndicate, joint venture, trust, trustee in bankruptcy, government and government body and any other entity.

This is **Exhibit "P"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CA M...', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

Personal Property Registry**Selection List**

For: [PK28874] [BLAKE CASSELS & GRAYDON]

May 24, 2019

08:35:42 AM

Return				Send to Mailbox	Help ?
Folio:	0002100000215				BC OnLine Mailbox
Business Name: VINCO HOLDINGS LTD		Exact Matches: 1		Local Print Limit: 999	

BSR101 - NO MORE INFORMATION TO DISPLAY

Debtor Name

- ☐ VINCO HOLDINGS LTD.
- ☒ VANCA HOLDINGS LTD.

BC OnLine: PPRS SEARCH RESULT 2019/05/24
Lterm: XPSP0054 For: PK28874 BLAKE CASSELS & GRAYDON 08:35:42

Index: BUSINESS DEBTOR

Search Criteria: VINCO HOLDINGS LTD

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: NOV 30, 2010

Reg. Length: 5 YEARS

Reg. Time: 09:52:00

Expiry Date: NOV 30, 2020

Base Reg. #: 887838F

Control #: D0299335

*** Expiry date includes subsequent registered renewal(s).

Block#

S0001 Secured Party: CANADIAN IMPERIAL BANK OF COMMERCE
595 BAY STREET, SUITE 500
TORONTO ON M5G 2C2

=D0001 Base Debtor: VINCO HOLDINGS LTD.
(Business) PO BOX 69
SICAMOUS BC V0E 2V1

D0002 Bus. Debtor: WATERWAY HOUSEBOATS LTD.
C/O 3RD FLR., 1665 ELLI ST.
KELOWNA BC V1Y 2B3

General Collateral:

ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN AND TO ALL
ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL
PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN
CROWN LICENCE OF OCCUPATION NO. 344093;

AND

ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND
TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL
PROPERTY.

Registering

Party: FH&P LAWYERS
2ND FLR., 217 LAWRENCE AVE.
KELOWNA BC V1Y 6L2

----- R E N E W A L -----

Reg. #: 840748I

Reg. Date: SEP 15, 2015

Reg. Life: 5 YEARS

Reg. Time: 07:18:28

Control #: D3324685

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 887838F

Base Reg. Date: NOV 30, 2010

PPRSSearchResult (003).txt

Registering

Party: D & H LIMITED PARTNERSHIP
4126 NORLAND AVENUE, SUITE 201
BURNABY BC V5G 3S8

Continued on Page 2

Search Criteria: VINCO HOLDINGS LTD

Page: 2

----- A M E N D M E N T / O T H E R C H A N G E -----

Reg. #: 156529L

Reg. Date: NOV 16, 2018

Reg. Time: 11:22:02

Control #: D5685476

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 887838F

Base Reg. Date: NOV 30, 2010

Details Description:

ADDITION OF COLLATERAL; AND
TO AMEND THE GENERAL COLLATERAL DESCRIPTION.

Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
*** ADDED ***				
V0001 BO	820172	1998	ASPIRUS	
*** ADDED ***				
V0002 BO	820044	1998	DESTINY VI	
*** ADDED ***				
V0003 BO	826285	2004	DOUBLE PLAY	
*** ADDED ***				
V0004 BO	820182	1998	HANK THE MOOSE	
*** ADDED ***				
V0005 BO	819513	1997	IMMANUEL I	
*** ADDED ***				
V0006 BO	820180	1998	NATALIE'S ARC	
*** ADDED ***				
V0007 BO	820174	1998	NUMBER 7-I	
*** ADDED ***				
V0008 BO	830909	2006	PENELOPE II	

*** ADDED ***
V0009 BO

819514 1997 ROXY I

General Collateral:

** DELETED **

ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN CROWN LICENCE OF OCCUPATION NO. 344093;

AND

ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY.

*** ADDED ***

ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN CROWN LICENCE OF OCCUPATION NO. 344093;

AND

ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY, INCLUDING IN THE FOLLOWING MARINE VESSELS:

THE ASPIRUS (OFFICIAL REGISTERED VESSEL NUMBER 820172 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE DESTINY VI (OFFICIAL REGISTERED VESSEL NUMBER 820044 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE DOUBLE PLAY (OFFICIAL REGISTERED VESSEL NUMBER 826285 WITH ITS

Continued on Page 3

Search Criteria: VINCO HOLDINGS LTD

Page: 3

PORT OF REGISTRY IN VANCOUVER);

THE HANK THE MOOSE (OFFICIAL REGISTERED VESSEL NUMBER 820182 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE IMMANUEL I (OFFICIAL REGISTERED VESSEL NUMBER 819513 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE NATALIE'S ARC (OFFICIAL REGISTERED VESSEL NUMBER 820180 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE NUMBER 7-I (OFFICIAL REGISTERED VESSEL NUMBER 820174 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE PENELOPE II (OFFICIAL REGISTERED VESSEL NUMBER 830909 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE ROXY I (OFFICIAL REGISTERED VESSEL NUMBER 819514 WITH ITS PORT OF REGISTRY IN VANCOUVER);

AND, IN EACH CASE TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND ADDITIONS THERETO OR INSTALLED THEREON, AND ALL PROCEEDS OF OR RELATING TO ANY OF THE FOREGOING, INCLUDING ALL INSURANCE PROCEEDS.

PPRSSearchResult (003).txt

PROCEEDS: GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INVESTMENT
PROPERTY, INSTRUMENTS, MONEY AND INTANGIBLES.

Registering

Party: BLAKE CASSELS & GRAYDON LLP
ATTN: PPSA CLERK
PO BOX 49314 2600 595 BURRARD
VANCOUVER BC V7X 1L3

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: SEP 25, 2015	Reg. Length: 6 YEARS
Reg. Time: 15:26:15	Expiry Date: SEP 25, 2021
Base Reg. #: 863609I	Control #: D3348060

This registration was selected and included for your protection
because of close proximity to your search criteria.

Block#

50001 Secured Party: BLUESHORE FINANCIAL CREDIT UNION
1250 LONSDALE AVENUE
NORTH VANCOUVER BC V7M 2H6

=D0001 Base Debtor: VANCA HOLDINGS LTD.
(Business) 1400-1500 WEST GEORGIA STREET
VANCOUVER BC V6G 2Z8

General Collateral:

ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Registering

Party: WEBSTER HUDSON & COOMBE LLP
510-1040 WEST GEORGIA STREET
VANCOUVER BC V6E 4H1

Continued on Page 4

Search Criteria: VINCO HOLDINGS LTD

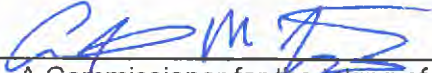
Page: 4

PPRSSearchResult (003).txt

Some, but not all, tax liens and other Crown claims are registered at the Personal Property Registry (PPR) and if registered, will be displayed on this search result. HOWEVER, it is possible that a particular chattel is subject to a Crown claim that is not registered at the PPR. Please consult the Miscellaneous Registrations Act, 1992 for more details. If you are concerned that a particular chattel may be subject to a Crown claim not registered at the PPR, please consult the agency administering the type of Crown claim.

[illegible]

This is **Exhibit "Q"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'C. M. J.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

Personal Property Registry**Selection List**

For: [PK28874] [BLAKE CASSELS & GRAYDON]

May 24, 2019

08:36:38 AM

Return				Send to Mailbox	Help ?
Folio: 0002100000215				BC Online Mailbox	

Business Name: WATERWAY
HOUSEBOATS LTD

Exact Matches: 4

Local Print Limit: 999

BSR101 - NO MORE INFORMATION TO DISPLAY

Debtor Name

- ➡ WATERWAY HOUSEBOATS LTD
- ➡ WATERWAY HOUSEBOATS LTD.
- ➡ WATERWAY HOUSEBOATS LTD.
- ➡ WATERWAY HOUSEBOATS LTD.

Display Selection

BC OnLine: PPRS SEARCH RESULT 2019/05/24
Lterm: XPSP0054 For: PK28874 BLAKE CASSELS & GRAYDON 08:36:38

Index: BUSINESS DEBTOR

Search Criteria: WATERWAY HOUSEBOATS LTD

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: NOV 30, 2010

Reg. Length: 5 YEARS

Reg. Time: 09:52:00

Expiry Date: NOV 30, 2020

Base Reg. #: 887838F

Control #: D0299335

*** Expiry date includes subsequent registered renewal(s).

Block#

S0001 Secured Party: CANADIAN IMPERIAL BANK OF COMMERCE
595 BAY STREET, SUITE 500
TORONTO ON M5G 2C2

D0001 Base Debtor: VINCO HOLDINGS LTD.
(Business) PO BOX 69
SICAMOUS BC V0E 2V1

=D0002 Bus. Debtor: WATERWAY HOUSEBOATS LTD.
C/O 3RD FLR., 1665 ELLI ST.
KELOWNA BC V1Y 2B3

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ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL
PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN
CROWN LICENCE OF OCCUPATION NO. 344093;
AND
ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND
TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL
PROPERTY.

Registering

Party: FH&P LAWYERS
2ND FLR., 217 LAWRENCE AVE.
KELOWNA BC V1Y 6L2

----- R E N E W A L -----

Reg. #: 840748I
Reg. Life: 5 YEARS

Reg. Date: SEP 15, 2015
Reg. Time: 07:18:28
Control #: D3324685

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 887838F

Base Reg. Date: NOV 30, 2010

PPRSSearchResult (003).txt

Registering

Party: D & H LIMITED PARTNERSHIP
4126 NORLAND AVENUE, SUITE 201
BURNABY BC V5G 3S8

Continued on Page 2

Search Criteria: WATERWAY HOUSEBOATS LTD

Page: 2

----- A M E N D M E N T / O T H E R C H A N G E -----

Reg. #: 156529L

Reg. Date: NOV 16, 2018

Reg. Time: 11:22:02

Control #: D5685476

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 887838F

Base Reg. Date: NOV 30, 2010

Details Description:

ADDITION OF COLLATERAL; AND
TO AMEND THE GENERAL COLLATERAL DESCRIPTION.

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Type	Serial #	Year	Make/Model	MH Reg.#
*** ADDED ***				
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*** ADDED ***				
V0002 BO	820044	1998	DESTINY VI	
*** ADDED ***				
V0003 BO	826285	2004	DOUBLE PLAY	
*** ADDED ***				
V0004 BO	820182	1998	HANK THE MOOSE	
*** ADDED ***				
V0005 BO	819513	1997	IMMANUEL I	
*** ADDED ***				
V0006 BO	820180	1998	NATALIE'S ARC	
*** ADDED ***				
V0007 BO	820174	1998	NUMBER 7-I	
*** ADDED ***				
V0008 BO	830909	2006	PENELOPE II	

*** ADDED ***
V0009 BO

819514 1997 ROXY I

General Collateral:

** DELETED **

ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN CROWN LICENCE OF OCCUPATION NO. 344093;

AND

ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY.

*** ADDED ***

ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY; ALL THE RIGHT, TITLE AND INTEREST OF VINCO HOLDINGS LTD. IN CROWN LICENCE OF OCCUPATION NO. 344093;

AND

ALL THE RIGHT, TITLE AND INTEREST OF WATERWAY HOUSEBOATS LTD. IN AND TO ALL ITS PRESENTLY OWNED OR HELD AND AFTER ACQUIRED OR HELD PERSONAL PROPERTY, INCLUDING IN THE FOLLOWING MARINE VESSELS:

THE ASPIRUS (OFFICIAL REGISTERED VESSEL NUMBER 820172 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE DESTINY VI (OFFICIAL REGISTERED VESSEL NUMBER 820044 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE DOUBLE PLAY (OFFICIAL REGISTERED VESSEL NUMBER 826285 WITH ITS

Continued on Page 3

Search Criteria: WATERWAY HOUSEBOATS LTD

Page: 3

PORT OF REGISTRY IN VANCOUVER);

THE HANK THE MOOSE (OFFICIAL REGISTERED VESSEL NUMBER 820182 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE IMMANUEL I (OFFICIAL REGISTERED VESSEL NUMBER 819513 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE NATALIE'S ARC (OFFICIAL REGISTERED VESSEL NUMBER 820180 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE NUMBER 7-I (OFFICIAL REGISTERED VESSEL NUMBER 820174 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE PENELOPE II (OFFICIAL REGISTERED VESSEL NUMBER 830909 WITH ITS PORT OF REGISTRY IN VANCOUVER);

THE ROXY I (OFFICIAL REGISTERED VESSEL NUMBER 819514 WITH ITS PORT OF REGISTRY IN VANCOUVER);

AND, IN EACH CASE TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND ADDITIONS THERETO OR INSTALLED THEREON, AND ALL PROCEEDS OF OR RELATING TO ANY OF THE FOREGOING, INCLUDING ALL INSURANCE PROCEEDS.

PPRSSearchResult (003).txt

PROCEEDS: GOODS, DOCUMENTS OF TITLE, CHATTEL PAPER, INVESTMENT
PROPERTY, INSTRUMENTS, MONEY AND INTANGIBLES.

Registering

Party: BLAKE CASSELS & GRAYDON LLP
ATTN: PPSA CLERK
PO BOX 49314 2600 595 BURRARD
VANCOUVER BC V7X 1L3

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: NOV 30, 2016 Reg. Length: 8 YEARS
Reg. Time: 09:00:54 Expiry Date: NOV 30, 2024
Base Reg. #: 688814J Control #: D4191582

Block#

S0001 Secured Party: THE BANK OF NOVA SCOTIA
4715 TAHOE BOULEVARD
MISSISSAUGA ON L4W0B4

=D0001 Base Debtor: WATERWAY HOUSEBOATS LTD.
(Business) BOX 69 MERVYN RDMERVYN RD
SICAMOUS BC V0E2V0

Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
V0001 MV	1C4PJMB51GW228937	2016	JEEP CHEROKEE	

General Collateral:

OUR SECURITY INTEREST IS LIMITED TO THE MOTOR VEHICLES LISTED ABOVE AND THE PROCEEDS OF THOSE VEHICLES

Registering

Party: D+H LIMITED PARTNERSHIP (BNS)
2 ROBERT SPECK PARKWAY, 15TH F
MISSISSAUGA ON L4Z1H8

Continued on Page 4

Search Criteria: WATERWAY HOUSEBOATS LTD

Page: 4

PPRSearchResult (003).txt

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: AUG 16, 2017 Reg. Length: 6 YEARS
 Reg. Time: 14:25:03 Expiry Date: AUG 16, 2023
 Base Reg. #: 209286K Control #: D4722814

Block#

S0001 Secured Party: BLUE BIRCH LEASING LTD.
 2-396 ASSINIBOINE AVE
 WINNIPEG MB R3C0Y1

=D0001 Base Debtor: WATERWAY HOUSEBOATS LTD.
 (Business) BOX 69 1 MERVYN RD
 SICAMOUS BC V0E2V0

Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
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V0001	MV	JYARN48N2HA000230	2017 YAMAHA FZ10 SPORT	
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General Collateral:

2017 YAMAHA FZ10 BLACK,SPORT WINDSHIELD,SHAD SH36 SIDE CASES,CASE MNT

Registering

Party: POLARIS LEASING LTD.
 2-396 ASSINIBOINE AVE
 WINNIPEG MB R3C0Y1

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: APR 12, 2019 Reg. Length: 5 YEARS
 Reg. Time: 09:54:55 Expiry Date: APR 12, 2024
 Base Reg. #: 432358L Control #: D5966491

Block#

S0001 Secured Party: CANADIAN IMPERIAL BANK OF COMMERCE
 25 KING STREET WEST, 16TH FL
 TORONTO ON M5L 1A2

=D0001 Base Debtor: WATERWAY HOUSEBOATS LTD
 (Business) PO BOX 69, 01 MERVYN ROAD
 SICAMOUS BC V0E 2V0

Vehicle Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
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V0001	BO	C07547BC	2004 HARBERCRAFT WORKBOAT	
V0002	BO	C12492BC	2015 SILVER WOLF WORKBOAT	

General Collateral:

THE VESSELS WITH OFFICIAL NUMBER C12492BC AND HULL NUMBER
OWO195002M99D AND WITH OFFICIAL NUMBER C07547BC AND HULL NUMBER
QBSY4361C404 (TOGETHER, THE "VESSELS") WHICH INCLUDES, BUT IS NOT
LIMITED TO: (I) ANY OR ALL OF THE VESSELS ENGINES, GEAR, MACHINERY,
BOATS, TACKLE, OUTFITS, FUEL, CONSUMABLES AND OTHER STOCKS, BELONGINGS

Continued on Page 5

Search Criteria: WATERWAY HOUSEBOATS LTD

Page: 5

AND APPURTENANCES OF OR RELATING TO SUCH VESSEL WHETHER ON BOARD OR ON
SHORE, ANY EQUIPMENT RELATED THERETO AND ALL ADDITIONS, IMPROVEMENTS
AND REPLACEMENTS TO SUCH VESSELS, AND ANY OTHER ITEMS, INCLUDING ANY
ITEM OF PERSONAL PROPERTY DESCRIBED ON THE FACE THEREOF AND, WHEN
REQUIRED BY THE CONTEXT, INDIVIDUALS ITEMS THEREOF OR ANY REPLACEMENTS
THERETO, (II) ALL MODULES, APPLIANCES, PARTS, COMPONENTS, INSTRUMENTS,
APPURTENANCES, ACCESSORIES, FURNISHINGS AND OTHER EQUIPMENT OF
WHATEVER NATURE WHETHER NOW OWNED OR HEREAFTER ACQUIRED WHICH MAY FROM
TIME TO TIME BE INCORPORATED IN THE VESSELS OR, AFTER REMOVAL
THEREFROM, REMAINS SUBJECT TO THE TERMS OF THE MARINE MORTGAGE FOR THE
VESSELS, AND (III) ALL PROCEEDS FROM ANY OF THE FOREGOING, INCLUDING
ALL INSURANCE PROCEEDS.

THE FULL COLLATERAL SERIAL NUMBERED GOODS DESCRIPTION IN V0001 IS:
HARBERCRAFT WORKBOAT ALUMINUM SINGLE MOTOR

THE FULL COLLATERAL SERIAL NUMBERED GOODS DESCRIPTION IN V0002 IS:
SILVER WOLF WORKBOAT ALUMINUM SINGLE MOTOR

THE COMPLETE NAME AND ADDRESS OF SECURED PARTY S0001 IS:
CANADIAN IMPERIAL BANK OF COMMERCE
COMMERCE COURT NORTH
25 KING STREET WEST, 16TH FLOOR
TORONTO, ON M5L 1A2

Registering

Party: BLAKE CASSELS & GRAYDON LLP
ATTN: PPSA CLERK
PO BOX 49314 2600 595 BURRARD
VANCOUVER BC V7X 1L3

Some, but not all, tax liens and other Crown claims are registered at the

PPRSSearchResult (003).txt

Personal Property Registry (PPR) and if registered, will be displayed on this search result. HOWEVER, it is possible that a particular chattel is subject to a Crown claim that is not registered at the PPR. Please consult the Miscellaneous Registrations Act, 1992 for more details. If you are concerned that a particular chattel may be subject to a Crown claim not registered at the PPR, please consult the agency administering the type of Crown claim.

[illegible]

This is **Exhibit "R"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CP M T', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

FORBEARANCE AGREEMENT

This Forbearance Agreement is dated effective March 1, 2019

Between

CANADIAN IMPERIAL BANK OF COMMERCE, having an address of Commerce Court North, 25 King Street West, 16th Floor, Toronto, Ontario, M5L 1A2

(the "Lender")

and

VINCO HOLDINGS LTD., having an address of Landmark 6 1100 – 1631 Dickson Avenue, Kelowna, BC, V1Y 0B5

(the "Borrower")

and

WATERWAY HOUSEBOATS LTD., having an address of Landmark 6 1100 – 1631 Dickson Avenue, Kelowna, BC, V1Y 0B5

(the "Guarantor")

WHEREAS:

A. Pursuant to the terms of a Credit Letter Agreement dated December 8, 2011, and the amendments thereto (collectively, the "**Credit Agreement**"), the Lender made the following credits available to Borrower:

- (a) Credit A: Demand Revolving Loan with a credit limit of \$1,000,000;
- (b) Credit B: Demand Instalment Loan with a credit limit of \$1,997,000;
- (c) Credit C: Demand Instalment Loan with a credit limit of \$420,300;
- (d) Credit D: Demand Instalment Loan with a credit limit of \$448,951;
- (e) Credit E: Demand Instalment Loan with a credit limit of \$1,633,333;
- (f) Credit F: Demand Instalment Loan with a credit limit of \$1,497,500; and
- (g) Credit G: Demand Instalment Loan with a credit limit of \$195,460

(collectively, the "**Loan**").

B. As security for its obligations under the Credit Agreement, the Lender has been granted security, including the following:

- (a) a Mortgage and Assignment of Rents dated November 29, 2010 granting the Lender security in the property owned by the Borrower located at 1 Mervyn Road, Sicamous, BC (the "**Mervyn Road Property**");
- (b) a Mortgage of License of Occupation dated November 29, 2010, granting the Lender security in the Borrower's interest in Crown License of Occupation 344093;
- (c) a Security Agreement dated November 29, 2010, granting the Lender security in all of the Borrower's present and after-acquired personal property and Crown License of Occupation 344093; and
- (d) an unlimited Assignment and Postponement of Claim by John Vinje, dated January 24, 2012

(collectively, the "**Security**").

C. The Guarantor has granted the Lender an unlimited guarantee dated November 29, 2010 (the "**Guarantee**") as security for the Borrower's obligations to the Lender under the Credit Agreement.

D. The Guarantor's obligations under the Guarantee are secured by a general security agreement dated November 29, 2010 (the "**Guarantor's Security**").

In consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereby covenant and agree as follows:

1. Acknowledgement of Indebtedness and Security

1.1 The Borrower and the Guarantor acknowledge that the Credit Agreement, the Security, the Guarantee and the Guarantor's Security have been duly authorized, executed and delivered and that the Credit Agreement, the Security, the Guarantee and the Guarantor's Security constitute legal, valid, enforceable and binding obligations on both the Borrower and the Guarantor, as applicable. Except where stated in this Forbearance Agreement, all terms, conditions, covenants, representations, and warranties in the Credit Agreement, the Security, the Guarantee and the Guarantor's Security are hereby acknowledged and shall continue in full force and effect.

1.2 The Borrower and the Guarantor acknowledge to the Lender and agree that the Borrower is liable to the Lender under the Credit Agreement in the amount of \$8,343,860.81 as of the end of business on February 28, 2019 (the "**Indebtedness**"), exclusive of fees and expenses.

1.3 The Borrower and the Guarantor acknowledge they have no contractual, legal (including limitation) or equitable defences to the Lender's claims and rights under or in respect of the Credit Agreement, Security, Guarantee or Guarantor's Security and agree no such defences can or will be raised.

1.4 The Borrower and the Guarantor acknowledge that the Borrower is in default of the terms of the Credit Agreement. The defaults of the Borrower currently known to the Lender are as follows:

- (a) making capital withdrawals without the Lender's prior consent;
- (b) failing to maintain an Adjusted Fixed Charge Coverage Ratio of not less than 1.20:1;
- (c) failing to make the required payments of interest and bank fees in respect of the Loan, which has caused the Loan to become overdrawn;
- (d) failing to reduce the balance of Credit A to \$1,000,000 as of November 30, 2018; and
- (e) failing to have a "clean-up period" during 2018, where the Borrower's account with the Lender is in a credit balance for at least 5 consecutive days

(collectively, the "Defaults").

1.5 Notwithstanding the Defaults, the Borrower and the Guarantor acknowledge that since entering into the Credit Agreement with the Lender, and as recently as 2018, the Borrower and the Guarantor have performed obligations in respect of the Credit Agreement, the Security, the Guarantee and the Guarantor's Security, including payment of both interest and principal due under the Credit Agreement to the Lender.

1.6 The Borrower and the Guarantor acknowledge and agree that pursuant to the terms of the Credit Agreement, interest is payable and continues to accrue on the Indebtedness as set out in the Credit Agreement, and that all amounts owing beyond the authorized credit limit for the Loan are charged interest at a rate of 21% per annum, as set out in the Credit Agreement.

1.7 The Borrower confirms the Security is valid and enforceable and constitutes security for all of the Indebtedness and that the Security shall remain in full force and effect for the benefit of the Lender following the execution of this Forbearance Agreement.

1.8 The Guarantor confirms that the Guarantor's Security is valid and enforceable and constitutes security for all of the Indebtedness and the Borrower's obligations to the Lender under the Credit Agreement. The Guarantor confirms that the Guarantor's Security shall remain in full force and effect for the benefit of the Lender following the execution of this Forbearance Agreement.

2. Term

This Forbearance Agreement shall expire on June 30, 2019, unless extended in writing by the Lender, and upon expiry of this Forbearance Agreement, an Event of Default (as

defined below) or termination, the Lender shall have no further obligation hereunder nor be bound by any of the terms herein.

3. **Grant of Security Interest**

3.1 The Borrower and the Guarantor hereby grant to the Lender, to guarantee the Borrower's obligations under the Credit Agreement, and any further credit agreements that may be entered into between the parties, the following security interests, to the extent already not granted to the Lender by the Security:

- (a) a mortgage in the amount of \$1,000,000 on the property at 1265 Monashee Frontage Road, Sicamous, B.C., PID 023-231-939, legally described as Lot 1, Plan NEP 22615, Section 6, Township 22, Range 7, W6M, KDYD;
- (b) a mortgage in the amount of \$1,000,000 on the property at 1272 Titus Road, Sicamous, B.C., PID 024-940-917, legally described as Lot 1, Plan NEP 68382, Section 6, Township 22, Range 7, W6M KDYD;
- (c) a security interest over all of the houseboats and other boats owned by the Guarantor and the Borrower; and
- (d) a further mortgage in the amount of \$3,000,000 on the Mervyn Road Property, for a total mortgage in favour of the Lender on the Mervyn Road Property in the amount of \$10,000,000,

(together, the "Additional Security").

4. **Covenants of the Borrower and the Guarantor:**

4.1 In consideration of the Lender's agreement to forbear as set out in Article 6 below, each of the Borrower and the Guarantor covenant and agree as follows:

- (a) to comply with all of the terms of this Forbearance Agreement;
- (b) to comply with all of the terms of the Credit Agreement, except as those terms may be specifically amended by this Forbearance Agreement;
- (c) that notwithstanding this Forbearance Agreement or anything contained herein, the Indebtedness shall continue to be payable upon demand in the discretion of the Lender, on the same basis as set out in the Credit Agreement;
- (d) not to borrow monies from any person or persons on the security of their assets, except with the written consent of the Lender;
- (e) in addition to the Borrower's reporting obligations under the Credit Agreement, to provide to the Lender a monthly rolling 13 week cash flow for the Borrower's operations and a monthly variance analysis with respect to the Borrower's business;
- (f) with respect to the sale of the Mervyn Road Property:

- i. to make best commercial efforts to sell the Mervyn Road Property on terms acceptable to the Lender;
 - ii. to enter into a listing agreement for the Mervyn Road Property, with a realtor, and on terms, acceptable to the Lender, no later than March 15, 2019;
 - iii. to provide to the Lender monthly updates with respect to the marketing and sale of the Mervyn Road Property; and
 - iv. to inform the Lender of all offers (written or oral) to purchase the Mervyn Road Property and provide to the Lender complete copies of all written offers or expressions of interest immediately upon receipt of such an offer to purchase or expression of interest;
- (g) with respect to the sale of 1937 Enterprises Inc. ("**1937 Enterprises**");
 - i. to make best commercial efforts to sell 1937 Enterprises on terms acceptable to the Lender together with the lands described in Article 3.1 (a) and (b) above (the "**1937 Lands**") on terms acceptable to the Lender;
 - ii. to provide to the Lender bi-weekly updates with respect to the marketing and sale of 1937 Enterprises and the 1937 Lands; and
 - iii. to inform the Lender of all offers (written or oral) to purchase 1937 Enterprises and/or the 1937 Lands and provide to the Lender complete copies of all written offers or expressions of interest immediately upon receipt of such an offer to purchase or expression of interest;
- (h) with respect to seeking and obtaining additional funding from the owners of certain of the houseboats used in the operation of the Borrower's business (the "**Houseboat Owners**");
 - i. to make best commercial efforts to obtain additional funding from the Houseboat Owners for the Borrower's business on terms acceptable to the Lender;
 - ii. to provide to the Lender a draft of a term sheet to be provided to certain Houseboat Owners who are known or shown to be accredited investors as defined in the Securities Act (BC) (the "**Term Sheet**") for the Lender's review by no later than March 15, 2019;
 - iii. to provide the Term Sheet to the Houseboat Owners by no later than March 21, 2019, as approved by the Lender; and
 - iv. to provide to the Lender bi-weekly updates with respect to obtaining additional funding from the Houseboat Owners;
- (i) to provide to the Lender a monthly update of the progress of the litigation brought by the Borrower and the Guarantor against the Province of British Columbia, the

District of Sicamous and others in the British Columbia Supreme Court (the "**Litigation**");

- (j) to immediately notify the Lender of any material changes, court orders or reasons for judgment in the Litigation;
- (k) should the Borrower, the Guarantor, any of their affiliates, (which term does not include Houseboat Owners who are Plaintiffs in the Litigation), or any of their counsel receive any proceeds from the Litigation, be it by way of settlement, court order, or otherwise (the "**Litigation Proceeds**"), then the Litigation Proceeds shall be distributed as follows and in the following priority:
 - i. first, an amount not to exceed \$450,000 shall be paid by the Borrower to Rush Ihas Hardwick LLP on account of outstanding invoices of Rush Ihas Hardwick LLP in respect of the delivery of legal services directly related to the Litigation;
 - ii. second, an amount of \$250,000 shall be paid by the Borrower to the Lender in respect of the Loan;
 - iii. third, an amount not to exceed \$325,000 shall be paid by the Borrower to the Houseboat Owners on account of unpaid 2018 investor payments;
 - iv. fourth, an amount not to exceed \$2,000,000 shall be paid to the Lender in respect of the Loan;
 - v. fifth, an amount not to exceed \$1,000,000 shall be retained by the Borrower to fund its operating expenses; and
 - vi. sixth, the remainder of the Litigation Proceeds shall be distributed between the Borrower and the Lender in equal portions.
- (l) subject to Article 4.1(m) herein, to reimburse the Lender for all professional fees and expenses incurred by the Lender, including payment of the fees which the Lender incurs as a result of the preparation or implementation of this Forbearance Agreement or the realization upon all or part of the Security, the Additional Security, the Guarantee, or the Guarantor's Security, including but not limited to professional fees incurred by the Lender for services provided by Blake, Cassels & Graydon LLP and Alvarez & Marsal Canada;
- (m) as of March 31, 2019, on a go forward and continuing and ongoing basis, and prior to paying any other creditors of the Borrower or the Guarantor, to pay to the Lender, in cash, as opposed to through credit advanced pursuant to the Loan, all interest payments due and owing on the Loan for the period commencing on and due after April 1, 2019;
- (n) on or before April 30, 2019, and prior to paying any other creditors of the Borrower or the Guarantor, to pay to the Lender, in cash, as opposed to through credit advanced pursuant to the Loan, the following:
 - i. all outstanding interest payments due and owing on the Loan; and

- ii. all of the Lender's outstanding professional fees incurred as a result of the preparation or implementation of this Forbearance Agreement or the realization upon all or part of the Security, the Additional Security, the Guarantee, or the Guarantor's Security, including but not limited professional fees incurred by the Lender for services provided by Blake, Cassels & Graydon LLP and Alvarez & Marsal Canada, including the following amounts and all other amounts incurred:

1. \$34,308.45 for the services provided to the Lender by Blake, Cassels & Graydon LLP as of December 31, 2018; and
2. \$46,215.93 for the services provided to the Lender by Alvarez & Marsal Canada as of December 31, 2018;

(o) on or before

- i. May 15, 2019, and in addition to the obligations listed in 4.1(k) above, to reduce and pay down the Credit A: Demand Revolving Loan such that the outstanding balance is equal to or less than \$1,750,000;
- ii. June 7, 2019, and in addition to the obligations listed in 4.1(k) above, to reduce and pay down the Credit A: Demand Revolving Loan such that the outstanding balance is equal to or less than \$1,500,000; and
- iii. June 30, 2019, and in addition to the obligations listed in 4.1(k) above, to reduce and pay down the Credit A: Demand Revolving Loan such that the outstanding balance is equal to or less than \$1,250,000;

(p) to carry on business in the normal course and in compliance with all applicable laws;

(q) to pay all priority claims (priority claims means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise which ranks in priority to the Security or the Guarantor's Security or otherwise in priority to any claim by the Lender for repayment of the Indebtedness, including but not limited to provincial and federal taxes and source deductions) and provide the Lender with confirmation and reconciliation of all paid priority claims;

(r) to execute all necessary documents and take any other required steps to give effect to this Forbearance Agreement and to allow for the registration of further security against the Borrower and the Guarantor's assets, including but not limited to the Additional Security; and

(s) to provide other information and documents as the Lender may require from time to time.

4.2 The Borrower and the Guarantor covenant and agree that they will not, without the prior written consent of the Lender:

- (a) pay any dividend or make any other distribution to shareholders;

- (b) repay shareholder's or other non-arm's length loans;
- (c) pay any director's fees or increase any remuneration to any present officers or consultants;
- (d) incur or commit to any capital expenditures;
- (e) make any withdrawals from the Borrower's or Guarantor's bank accounts other than for the regular business operations of the Borrower; and
- (f) transfer, assign, convey, mortgage, charge or otherwise dispose of any real or personal property or interest in real or personal property other than in the ordinary course of business.

4.3 In further consideration of the Lender's forbearance, the Borrower and the Guarantor covenant and agree that, should there be an Event of Default as defined in Article 7 herein, they will not oppose but will consent to the Lender commencing realization proceedings under the terms of the Security, the Additional Security and the Guarantor's Security and, without limiting the generality of the foregoing, will consent to the appointment of an agent or receiver to realize on the Security, the Additional Security and the Guarantor's Security

5. **Acknowledgements and Releases**

The Borrower and the Guarantor acknowledge and agree that:

- (a) the Borrower is in default under the Credit Agreement, and absent the terms of this Forbearance Agreement, the Lender is entitled to repayment of the Indebtedness and the Loan and to enforce the Security, the Guarantee, and the Guarantor's Security;
- (b) no further credit shall be advanced to the Borrower by the Lender pursuant to the Credit Agreement;
- (b) the Lender has entered into this Forbearance Agreement at the request of the Borrower and the Guarantor;
- (c) the Borrower and the Guarantor have no claims or causes of action against the Lender of any kind and, if any claims or causes of action exist or arise, the Borrower and the Guarantor hereby release the Lender from and any and all claims or causes of action; and
- (d) the Borrower and the Guarantor acknowledge that the Lender has entered into this Forbearance Agreement based upon the release of the Lender and the representations made herein.

6. **The Lender's Covenants**

During the term of this Forbearance Agreement, and provided the Borrower is not in default hereunder, the Lender will forbear from realizing on the Security, the Additional

Security, the Guarantee, and the Guarantor's Security as a result of the Defaults, except as provided herein.

7. Events of Default

7.1 It shall be an event of default (an "Event of Default") under this Forbearance Agreement if, at any time after its execution:

- (a) the Borrower commits a breach of this Forbearance Agreement or any further breach of Credit Agreement other than the Defaults, as defined herein;
- (b) the Borrower or the Guarantor fail to perform their obligations under the Credit Agreement, the Security, the Additional Security, the Guarantee or the Guarantor's Security, except as permitted herein;
- (c) any encumbrancer or creditor of the Borrower or the Guarantor takes possession of, or take steps to realize or execute against any real or personal property of the Borrower or the Guarantor;
- (d) the Borrower or the Guarantor without the prior written consent of the Lender:
 - (i) pass a resolution or institute proceedings for their bankruptcy, winding-up, liquidation or dissolution or consent to the institution or filing of any petition or proceeding with respect thereto;
 - (ii) file a petition or commence a proceeding or action seeking reorganization, re-adjustment, rearrangement, restructuring, composition or similar relief under any Canadian or other applicable law or consent to the filing of any such petition or to the appointment of a receiver, receiver-manager, liquidator, trustee or similar officer of themselves or of any of their real or personal property;
 - (iii) make an assignment or file a proposal for the benefit of their creditors; or
 - (iv) take any action in furtherance if any of the aforesaid purposes.

7.2 Upon the occurrence of an Event of Default the Lender may at its option, and without further notice to the Borrower or the Guarantor:

- (a) immediately commence foreclosure or other realization proceedings with respect to the Security, the Additional Security, the Guarantee and the Guarantor's Security;

- (b) appoint a Receiver or Receiver-Manager of the Borrower or the Guarantor and/or their real and personal property; and/or
- (c) pursue such other remedies as it deems appropriate, including termination of this Forbearance Agreement.

7.3 Notwithstanding the foregoing and without affecting the demand nature of the Loan, the Borrower and the Guarantor hereby covenant and agree that the Lender may, if in its sole discretion it determines that there has been a material adverse change in the affairs of the Borrower or Guarantor or in its security position, immediately declare this Forbearance Agreement to be of no further force and effect and may, without further notice to the Borrower or the Guarantor, immediately take such steps as it deems necessary or advisable to realize on the Security, the Additional Security and the Guarantor's Security, including commencing foreclosure proceedings or appointing a receiver, receiver-manager, trustee in bankruptcy, or liquidator of the Borrower or the Guarantor and their real and personal property.

8. General Provisions

8.1 Time shall be of the essence of this Forbearance Agreement.

8.2 Should any provision of this Forbearance Agreement be declared or held invalid or unenforceable by a court of competent jurisdiction, then such invalidity or unenforceability will not affect the validity or enforceability of any or all of the remaining provisions of this Forbearance Agreement which will continue in full force and effect and be construed as if this Forbearance Agreement had been executed without the invalid and unenforceable provision.

8.3 The Borrower and the Guarantor acknowledge that they have received independent legal advice with respect to the execution of this Forbearance Agreement and all related documentation and confirm they have entered into this Forbearance Agreement of their own free will without any coercion or duress having been imposed upon them by the Lender or any other party.

8.4 The Borrower and the Guarantor acknowledge and agree that each of the recitals contained in this Forbearance Agreement is true and correct in all material respects, and form an essential part of this Forbearance Agreement.

8.5 This Forbearance Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

8.6 This Forbearance Agreement may be signed by the parties hereto in as many counterparts as may be necessary, each of which so signed will be deemed to be an original and such counterparts together will constitute one and the same instrument and the date of execution will be deemed to be dated as of the date and year first above written.

8.7 This Forbearance Agreement and the agreements referred to herein constitute the entire agreement between the parties hereof and supersede any prior agreements,

undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof. Any amendment of this Forbearance Agreement shall not be binding unless in writing and signed by the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF the parties have executed this Forbearance Agreement as of the date first above written.

VINCO HOLDINGS LTD.

Per: 

Name:

John Vinje

Title:

President

WATERWAY HOUSEBOATS LTD.

Per: 

Name:

John Vinje

Title:

President

CANADIAN IMPERIAL BANK OF
COMMERCE

Per: 

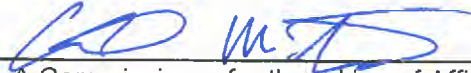
Name:

SUPRIYA SARIN

Title:

Senior Director

This is **Exhibit "S"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be "CD MTS", written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

**LAND TITLE ACT
FORM B (Section 225)**

MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 4 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MIKE VENTRESCA, BLAKE, CASSELS & GRAYDON LLP

595 BURRARD STREET, P.O. BOX 49314

(604) 631-3392 LTO Client No.: 11163

SUITE 2600, THREE BENTALL CENTRE

c/m: 2100/215

VANCOUVER

BC V7X 1L3

DocID: 51134643

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[legal description]

027-514-013

LOT 1 SECTIONS 19 AND 30 TOWNSHIP 21 RANGE 7 WEST OF THE 6TH
MERIDIAN KAMLOOPS DIVISION YALE DISTRICT PLAN KAP86301

STC?

YES ☐

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

VINCO HOLDINGS LTD.

LANDMARK 6, 1100 - 1631 DICKSON AVENUE

Incorporation No

KELOWNA

BRITISH COLUMBIA

BC0823825

V1Y 0B5

CANADA

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

CANADIAN IMPERIAL BANK OF COMMERCE

CREDIT PROCESSING SERVICES, 595 BAY STREET, SUITE 500

TORONTO

ONTARIO

CANADA

M5G 2C2

5. PAYMENT PROVISIONS:

(a) Principal Amount:

\$3,000,000

(b) Interest Rate:

See Schedule

(c) Interest Adjustment

Date: N/A

Y M D

(d) Interest Calculation Period:

Monthly, not in advance

(e) Payment Dates:

N/A

(f) First Payment

Date: N/A

(g) Amount of each periodic payment:

N/A

(h) *Interest Act* (Canada) Statement.
The equivalent rate of interest calculated
half yearly not in advance
is N/A % per annum.

(i) Last Payment

Date: N/A

(j) Assignment of Rents which the
applicant wants registered?

YES ☒ NO ☐

If YES, page and paragraph number:

MT900102 Page 10
Paragraph 15

(k) Place of payment:

Postal Address in Item 4

(l) Balance Due

Date: On Demand

6. MORTGAGE contains floating charge on land ?

YES ☐ NO ☒

7. MORTGAGE secures a current or running account ?

YES ☒ NO ☐

8. INTEREST MORTGAGED:

Fee Simple ☒Other (specify) ☐

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

(a) Prescribed Standard Mortgage Terms ☐(b) Filed Standard Mortgage Terms ☒

D F Number: MT900102

(c) Express Mortgage Terms ☐

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

MORTGAGE CA1824151; ASSIGNMENT OF RENTS CA1824152

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)



GEORD HOLLAND
BARRISTER & SOLICITOR
1100-1631 Dickson Ave.
Kelowna, BC V1Y 0B5
Tel: 778-484-8191

Execution Date

Y	M	D
19	04	04

Borrower(s) Signature(s)

VINCO HOLDINGS LTD., by its
authorized signatory(ies):

Name:

Title:

NEIL MILLAR - C.O.O.

Name:

Title:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 3 OF 4 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. PAYMENT PROVISIONS:**5. (b) Interest Rate**

The Interest Rate is a variable rate per year equal to the Prime Rate plus 3% per year, with interest on overdue interest at the same rate. "Prime Rate" means the variable interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

10. ADDITIONAL OR MODIFIED TERMS:**(a) Indebtedness**

For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) including without limitation the outstanding balance of the Principal Amount advanced to the Mortgagor from time to time, interest thereon at the Interest Rate and all other present or future indebtedness and liabilities of the Mortgagor to the Bank payable under or by virtue of the Mortgage.

(b) Required Advances

Notwithstanding any other provisions of this Mortgage (including any standard mortgage terms incorporated by reference) if the Bank is called upon to make a payment for the account of the Mortgagor pursuant to a letter of credit, letter of guarantee or acceptance of a bill of exchange or other negotiable instrument payment by the Bank shall constitute an advance under this Mortgage which the Bank shall be required to make.

(c) Environmental Laws

1. Definitions - In this provision "hazardous substance" includes, without limitation, any substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal or plant health or life or the environment, and in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority or competent jurisdiction.
2. Representations - The Mortgagor represents and warrants to the Bank that to the best of the Mortgagor's information and belief, after due enquiry and investigation:
 - i. the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders); and
 - ii. the Property does not contain any hazardous substances deposited added or discharged by the Mortgagor or a prior owner, lessee or occupier of the Property or any adjoining property.

LAND TITLE ACT
FORM ESCHEDULE

PAGE 4 OF 4 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

3. Covenant - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.
4. Indemnity - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.

This is **Exhibit "T"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to read 'CMTS', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

**LAND TITLE ACT
FORM B (Section 225)**

MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 4 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MIKE VENTRESCA, BLAKE, CASSELS & GRAYDON LLP

595 BURRARD STREET, P.O. BOX 49314

(604) 631-3392 LTO Client No.: 11163

SUITE 2600, THREE BENTALL CENTRE

c/m: 2100/215

VANCOUVER

BC V7X 1L3

DocID: 51134639

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[legal description]

023-231-939

LOT 1 SECTION 6 TOWNSHIP 22 RANGE 7 W6M MERIDIAN KAMLOOPS
DIVISION YALE DISTRICT PLAN NEP22615

STC?

YES ☐

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

VINCO HOLDINGS LTD.

LANDMARK 6, 1100 - 1631 DICKSON AVENUE

Incorporation No

KELOWNA

BRITISH COLUMBIA

BC0823825

V1Y 0B5

CANADA

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

CANADIAN IMPERIAL BANK OF COMMERCE

CREDIT PROCESSING SERVICES, 595 BAY STREET, SUITE 500

TORONTO

ONTARIO

CANADA

M5G 2C2

5. PAYMENT PROVISIONS:

(a) Principal Amount:

\$1,000,000

(b) Interest Rate:

See Schedule

(c) Interest Adjustment

Date: N/A

Y M D

(d) Interest Calculation Period:

Monthly, not in advance

(e) Payment Dates:

N/A

(f) First Payment

Date: N/A

(g) Amount of each periodic payment:

N/A

(h) *Interest Act* (Canada) Statement.
The equivalent rate of interest calculated
half yearly not in advance
is N/A % per annum.

(i) Last Payment

Date: N/A

(j) Assignment of Rents which the
applicant wants registered?

YES ☒ NO ☐

If YES, page and paragraph number:

MT900102 Page 10

Paragraph 15

(k) Place of payment:

Postal Address in Item 4

(l) Balance Due

Date: On Demand

6. MORTGAGE contains floating charge on land ?
YES ☐ NO ☒

7. MORTGAGE secures a current or running account ?
YES ☒ NO ☐

8. INTEREST MORTGAGED:

Fee Simple ☒

Other (specify) ☐

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

(a) Prescribed Standard Mortgage Terms ☐

(b) Filed Standard Mortgage Terms ☒

(c) Express Mortgage Terms ☐

D F Number: MT900102

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

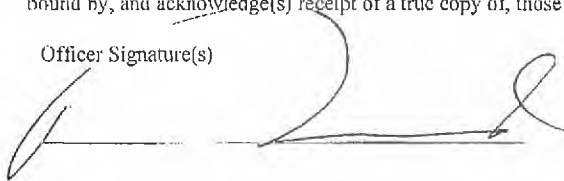
SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

N/A

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)



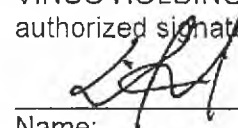
GEORD HOLLAND
BARRISTER & SOLICITOR
1100-1631 Dickson Ave.
Kelowna, BC V1Y 0B5
Tel: 778-484-8191

Execution Date

Y	M	D
19	04	04

Borrower(s) Signature(s)

VINCO HOLDINGS LTD., by its
authorized signatory(ies):



Name:

Title:

NEIL MILLAR - C.O.O.

Name:

Title:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM ESCHEDULE

PAGE 3 OF 4 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. PAYMENT PROVISIONS:

5. (b) Interest Rate

The Interest Rate is a variable rate per year equal to the Prime Rate plus 3% per year, with interest on overdue interest at the same rate. "Prime Rate" means the variable interest rate per year declared by the Bank from time to time to be its prime rate for Canadian dollar loans made by the Bank in Canada. The Interest Rate will change automatically, without notice, whenever the Prime Rate changes.

10. ADDITIONAL OR MODIFIED TERMS:

(a) Indebtedness

For the purposes of the Mortgage, the term "Indebtedness" means the aggregate of all present and future indebtedness and liabilities of the Mortgagor to the Bank (direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred as principal or surety, whether incurred alone or with another or others and whether arising from dealings between the Bank and the Mortgagor or from other dealings or proceedings by which the Bank may become a creditor of the Mortgagor) including without limitation the outstanding balance of the Principal Amount advanced to the Mortgagor from time to time, interest thereon at the Interest Rate and all other present or future indebtedness and liabilities of the Mortgagor to the Bank payable under or by virtue of the Mortgage.

(b) Required Advances

Notwithstanding any other provisions of this Mortgage (including any standard mortgage terms incorporated by reference) if the Bank is called upon to make a payment for the account of the Mortgagor pursuant to a letter of credit, letter of guarantee or acceptance of a bill of exchange or other negotiable instrument payment by the Bank shall constitute an advance under this Mortgage which the Bank shall be required to make.

(c) Environmental Laws

1. Definitions - In this provision "hazardous substance" includes, without limitation, any substances, products, materials or goods which are hazardous or dangerous or potentially hazardous or dangerous to human, animal or plant health or life or the environment, and in particular, includes any substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority or competent jurisdiction.
2. Representations - The Mortgagor represents and warrants to the Bank that to the best of the Mortgagor's information and belief, after due enquiry and investigation:
 - i. the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders); and
 - ii. the Property does not contain any hazardous substances deposited added or discharged by the Mortgagor or a prior owner, lessee or occupier of the Property or any adjoining property.

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 4 OF 4 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

3. Covenant - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.
4. Indemnity - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.

**LAND TITLE ACT
FORM B (Section 225)**

MORTGAGE - PART 1 Province of British Columbia

PAGE 1 OF 4 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MIKE VENTRESCA, BLAKE, CASSELS & GRAYDON LLP

595 BURNARD STREET, P.O. BOX 49314

(604) 631-3392 LTO Client No.: 11163

SUITE 2600, THREE BENTALL CENTRE

c/m: 2100/215

VANCOUVER

BC V7X 1L3

DocID: 51134622

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[legal description]

024-940-917

LOT 1 SECTION 6 TOWNSHIP 22 RANGE 7 WEST OF THE 6TH MERIDIAN
KAMLOOPS DIVISION YALE DISTRICT PLAN NEP68382

STC? YES ☐

3. BORROWER(S) (MORTGAGOR(S)): (including postal address(es) and postal code(s))

VINCO HOLDINGS LTD.

LANDMARK 6, 1100 - 1631 DICKSON AVENUE

Incorporation No

KELOWNA

BRITISH COLUMBIA

BC0823825

V1Y 0B5

CANADA

4. LENDER(S) (MORTGAGEE(S)): (including occupation(s), postal address(es) and postal code(s))

CANADIAN IMPERIAL BANK OF COMMERCE

CREDIT PROCESSING SERVICES, 595 BAY STREET, SUITE 500

TORONTO

ONTARIO

CANADA

M5G 2C2

5. PAYMENT PROVISIONS:

(a) Principal Amount:

\$1,000,000

(b) Interest Rate:

See Schedule

(c) Interest Adjustment

Date: N/A

Y M D

(d) Interest Calculation Period:

Monthly, not in advance

(e) Payment Dates:

N/A

(f) First Payment

Date: N/A

(g) Amount of each periodic payment:

N/A

(h) *Interest Act* (Canada) Statement.

The equivalent rate of interest calculated
half yearly not in advance
is N/A % per annum.

(i) Last Payment

Date: N/A

(j) Assignment of Rents which the
applicant wants registered ?

YES ☒ NO ☐

If YES, page and paragraph number:

MT900102 Page 10
Paragraph 15

(k) Place of payment:

Postal Address in Item 4

(l) Balance Due

Date: On Demand

MORTGAGE - PART 1

PAGE 2 OF 4 PAGES

6. MORTGAGE contains floating charge on land ?
YES ☐ NO ☒

7. MORTGAGE secures a current or running account ?
YES ☒ NO ☐

8. INTEREST MORTGAGED:

Fee Simple ☒
Other (specify) ☐

9. MORTGAGE TERMS:

Part 2 of this mortgage consists of (select one only):

- (a) Prescribed Standard Mortgage Terms ☐
(b) Filed Standard Mortgage Terms ☒
(c) Express Mortgage Terms ☐

D F Number: MT900102

(annexed to this mortgage as Part 2)

A selection of (a) or (b) includes any additional or modified terms referred to in item 10 or in a schedule annexed to this mortgage.

10. ADDITIONAL OR MODIFIED TERMS:

SEE SCHEDULE

11. PRIOR ENCUMBRANCES PERMITTED BY LENDER:

N/A

12. EXECUTION(S): This mortgage charges the Borrower's interest in the land mortgaged as security for payment of all money due and performance of all obligations in accordance with the mortgage terms referred to in item 9 and the Borrower(s) and every other signatory agree(s) to be bound by, and acknowledge(s) receipt of a true copy of, those terms.

Officer Signature(s)

GEORD HOLLAND
BARRISTER & SOLICITOR
1100-1631 Dickson Ave.
Kelowna, BC V1Y 0B5
Tel: 778-484-8191

Execution Date

Y	M	D
19	04	04

Borrower(s) Signature(s)

VINCO HOLDINGS LTD., by its
authorized signatory(ies):

Name:

Title:

NEIL MILLAR, C.O.O.

Name:

Title:

OFFICER CERTIFICATION:

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LAND TITLE ACT
FORM ESCHEDULE

PAGE 3 OF 4 PAGES

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5. (b) Interest Rate

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 - i. the Property has never been used to manufacture, refine, handle, store or dispose of any hazardous substances (except in compliance with all laws, regulations and orders); and
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**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 4 OF 4 PAGES

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3. Covenant - The Mortgagor covenants and agrees with the Bank that it will comply in all material respects with all environmental laws, rules and regulations affecting or relating to the Property and will assume and perform any and all environmental liabilities and obligations relating to the Property including, without limitation, any liability for the clean-up of any hazardous substances on, under or emanating from the Property.
4. Indemnity - The Mortgagor hereby agrees to indemnify and hold the Bank harmless from and against any and all liabilities, losses, claims, damages (including lost profits, consequential damages, interest, penalties, fines and monetary and other sanctions) incurred or suffered by the Bank by reason of, or in any way related to, the breach of any of the representations and warranties set forth above or the breach of any of the covenants and agreements set forth above.

This is **Exhibit "U"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'M. T. S.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)

FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage "B" in the Register

at (hh:mm) 11:53 a.m.

14-05-2019

Date (dd-mm-yyyy)

Blackman

Registrar

Official number (if assigned) 820172	Name of vessel (if assigned) ASPIRUS	Port of registry VANCOUVER BC
---	---	----------------------------------

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)

WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s)

in the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

Neil Miller, Chief Operating Officer

Name and title (Print)

I state that I have authority to bind

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

I also state that

WATERWAY HOUSEBOATS LTD.

is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that

is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

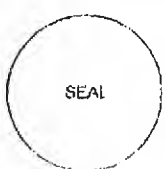
☐ as per the laws of Canada; OR

☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Official number (if assigned) 820172	Name of vessel (if assigned) ASPIRUS	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above:		
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I _____ state that I have authority to bind _____		
_____ Name and title (Print)	_____ Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
_____ Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
_____ Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
_____ Signature of Officer or Director	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
_____ Name of Indian Band (Print)	_____ Signature	
_____ Name of person signing above (Print)		
_____ Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address. (S. 68 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)
FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage " B " in the Register

14-05-2019

at (hh:mm) 11:53 a.m. p.m.

Date (dd-mm-yyyy)

Registrar

Official number (if assigned) B20044 Name of vessel (if assigned) DESTINY VI Port of registry VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)
WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR
TORONTO, ONTARIO M5L 1A2

(We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s)

in the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I Neil Miller, Chief Operating Officer state that I have authority to bind

WATERWAY HOUSEBOATS LTD.

Name and title (Print)

Name of corporation (Print)

I also state that

WATERWAY HOUSEBOATS LTD.

is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I _____ state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that

Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage:

☐ as per the laws of Canada; OR


☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).



Official number (if assigned) 820044	Name of vessel (if assigned) DESTINY VI	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
We, the mortgagee(s) authorize the discharge of the mortgage described above.		
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I, _____ state that I have authority to bind _____		
Name and title (Print)	Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
Signature of Officer or Director	Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
Name of Indian Band (Print)	Signature	
Name of person signing above (Print)		
Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)

FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage "B" in the Register

14-05-2019

at (hh:mm) 11:53 a.m. p.m.

Date (dd-mm-yyyy)

Registrar

Official number (if assigned)

826286 826285

Name of vessel (if assigned)

DOUBLE PLAY

Port of registry

VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)

WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SIKAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, governed by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s)

in the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I, Ned Miller, Chief Operating Officer, state that I have authority to bind

Name and title (Print)

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

I also state that

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage:

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I, _____, state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that

Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage:


☐ as per the laws of Canada; OR

☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Official number (if assigned) 826286	Name of vessel (if assigned) DOUBLE PLAY	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above.		
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I, _____ state that I have authority to bind _____		
_____ Name and title (Print)	_____ Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
_____ Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
_____ Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
_____ Signature of Officer or Director	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
_____ Name of Indian Band (Print)	_____ Signature	
_____ Name of person signing above (Print)		
_____ Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)

FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage "A" In the Register

14-05-2019

at (hh:mm) 11:53 a.m./p.m.

Date (dd-mm-yyyy)

Registrar

Official number (If assigned) 820182 Name of vessel (If assigned) HANK THE MOOSE Port of registry VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)

WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s).

In the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I, Neil Miller, Chief operating Officer state that I have authority to bind

Name and title (Print)

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

I also state that WATERWAY HOUSEBOATS LTD. is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I, state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)


☐ as per the laws of Canada; OR

☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Official number (If assigned) 820182	Name of vessel (if assigned) HANK THE MOOSE	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above.		
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I, _____ state that I have authority to bind _____		
_____ Name and title (Print)		_____ Name of corporation (Print)
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage.		
_____ Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
_____ Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar.		
I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
_____ Signature of Officer or Director		_____ Date Discharge of Mortgage signed (dd-mm-yyyy)
INDIAN BAND		
_____ Name of Indian Band (Print)		_____ Signature
		_____ Name of person signing above (Print)
		_____ Date Discharge of Mortgage signed (dd-mm-yyyy)
		 SEAL

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)

FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage "B" in the Register

14-05-2019

at (hh:mm) 11:53 a.m.

Chester

Registrar

Official number (if assigned) 819513 Name of vessel (if assigned) IMMANUEL I Port of registry VANCOUVER

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)
WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of ☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, governed by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s).

In the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor Signature of mortgagor
Signature of mortgagor Signature of mortgagor
Signature of mortgagor Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I, Neil Pillar Chief Operating Officer state that I have authority to bind WATERWAY HOUSEBOATS LTD.
Name and title (Print) Name of corporation (Print)

I also state that WATERWAY HOUSEBOATS LTD. is the name of a corporation which legally exists at the date of this Mortgage.
Name of corporation (Print)

☐ as per the laws of Canada; OR ☒ as per the laws of BRITISH COLUMBIA
Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Signature of Officer or Director March 1, 2019
Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION


I state that I have authority to bind
Name and title (Print) Name of corporation (Print)

I also state that is the name of a corporation which legally exists at the date of this Mortgage.
Name of corporation (Print)

☐ as per the laws of Canada, OR ☐ as per the laws of
Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Official number (if assigned) 819513	Name of vessel (if assigned) IMMANUEL I	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above.		
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I _____ state that I have authority to bind _____		
Name and title (Print)	Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage.		
Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation, Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
Signature of Officer or Director	Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
Name of Indian Band (Print)	Signature	
Name of person signing above (Print)		
Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)
FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage "C" in the Register 14-05-2019
at (hh:mm) 11:53 a.m. Date (dd-mm-yyyy) 14-05-2019
Registrar.

Official number (if assigned) 820180 Name of vessel (if assigned) NATALIE'S ARC Port of registry VANCOUVER

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)
WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of ☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, governed by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s).

In the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I, Neil Miller, Chief Operating Officer, state that I have authority to bind WATERWAY HOUSEBOATS LTD.
Name and title (Print) Name of corporation (Print)

I also state that WATERWAY HOUSEBOATS LTD. is the name of a corporation which legally exists at the date of this Mortgage.
Name of corporation (Print)

☐ as per the laws of Canada; OR ☒ as per the laws of BRITISH COLUMBIA
Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION


I, state that I have authority to bind
Name and title (Print) Name of corporation (Print)

I also state that is the name of a corporation which legally exists at the date of this Mortgage.
Name of corporation (Print)

☐ as per the laws of Canada; OR ☐ as per the laws of
Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the Canada Shipping Act, 2001 applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the Canada Shipping Act, 2001).

Official number (if assigned) 820180	Name of vessel (if assigned) NATALIE'S ARC	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
We, the mortgagee(s) authorize the discharge of the mortgage described above.		
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I, _____ state that I have authority to bind _____		
Name and title (Print)	Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
Signature of Officer or Director	Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
Name of Indian Band (Print)	Signature	
Name of person signing above (Print)		
Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address. (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)
FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage " B " in the Register

14-05-2019

at (hh:mm) 11:53 a.m./p.m.

Date (dd-mm-yyyy) 14-05-2019
Registrar R. Kellian

Official number (if assigned) 820174 Name of vessel (if assigned) NUMBER 7-I Port of registry VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)

WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 59, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s).

In the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagee

Signature of mortgagor

Signature of mortgagee

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

I, Neil Hillier, Chief Operating Officer, state that I have authority to bind

WATERWAY HOUSEBOATS LTD.

Name and title (Print)

Name of corporation (Print)

I also state that

WATERWAY HOUSEBOATS LTD.

is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I, _____ state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that

Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage:

☐ as per the laws of Canada; OR

☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Official number (If assigned) 820174	Name of vessel (If assigned) NUMBER 7-I	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above.		
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Signature of mortgagee	
Signature of mortgagee	Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I _____ state that I have authority to bind _____		
Name and title (Print)	Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage.		
Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
Signature of Officer or Director	Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
Name of Indian Band (Print)	Signature	<div style="border: 1px solid black; border-radius: 50%; width: 80px; height: 80px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> SEAL </div>
Name of person signing above (Print)		
Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)

FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage " B " in the Register

14-05-2019

at (h:mm) 11:53 a.m./p.m. check

Registrar

Official number (if assigned) 830909 Name of vessel (if assigned) PENELOPE II Port of registry VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)

WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0K 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, entered into by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR

TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s).

In the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagee

Signature of mortgagor

Signature of mortgagee

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

Neil Muller, Chief Operating Officer
Name and title (Print)

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

I also state that WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage.

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

[Signature]
Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

[Signature]
Name and title (Print)

state that I have authority to bind

WATERWAY HOUSEBOATS LTD.
Name of corporation (Print)

I also state that

WATERWAY HOUSEBOATS LTD.
Name of corporation (Print)

is the name of a corporation which legally exists at the date of this Mortgage.

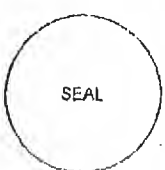
☐ as per the laws of Canada; OR

☐ as per the laws of

BRITISH COLUMBIA
Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Official number (if assigned) 830909	Name of vessel (if assigned) PENELOPE II	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
I/We, the mortgagee(s) authorize the discharge of the mortgage described above.		
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I, _____ state that I have authority to bind _____		
_____ Name and title (Print)	_____ Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
_____ Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
_____ Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
_____ Signature of Officer or Director	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
_____ Name of Indian Band (Print)	_____ Signature	
_____ Name of person signing above (Print)		
_____ Date Discharge of Mortgage signed (dd-mm-yyyy)		

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).



Transport Canada Transports Canada

PROTECTED A (WHEN COMPLETED)
FORM 7

MORTGAGE

FOR DEPARTMENT USE ONLY

Entered as Mortgage " B " in the Register

14-05-2019

at (hh:mm) 11:53

a.m. p.m.

Date (dd-mm-yyyy)

Crackon

Registrar

Official number (if assigned)
819514

Name of vessel (if assigned)
ROXY I

Port of registry
VANCOUVER BC

A - MORTGAGE

Name(s) and address(es) of registered owner(s)/mortgagor(s)
WATERWAY HOUSEBOATS LTD.

01 MERVYN RD., PO BOX 69, SICAMOUS, BRITISH COLUMBIA V0E 2V0

Nature of consideration

☐ Principal sum of

☒ Line of credit

Provide additional details such as interest, method of payment, or date the collateral agreement was executed

An account current between the mortgagor, as guarantor, and the mortgagee, as lender, by a Credit Agreement dated December 8, 2011 and confirmed by a Forbearance Agreement dated March 1, 2019 (both as may be amended and/or supplemented from time to time).

Name(s) and address(es) of mortgagee(s)

CANADIAN IMPERIAL BANK OF COMMERCE

COMMERCE COURT NORTH, 25 KING STREET WEST, 16TH FLOOR
TORONTO, ONTARIO M5L 1A2

I/We, the mortgagor(s) in consideration of the above now covenant with the mortgagee(s) to pay to the mortgagee(s) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner set out. For the purpose of better securing payment to the mortgagee(s), the mortgagor(s) hereby mortgage to the mortgagee(s) 64 shares (number of shares must be indicated) of which the mortgagor(s) are the owner(s)

in the vessel described above, and its boats and appurtenances. Further, the mortgagor(s) covenant with the mortgagee(s) that the mortgagor(s) have the power to mortgage the shares and that they are free of encumbrance(s) except as appear on the register of the vessel. (delete if not applicable)

INDIVIDUAL

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Signature of mortgagor

Date Mortgage signed (dd-mm-yyyy)

1 - CORPORATION

Neil Miller, Chief Operating Officer
Name and title (Print)

state that I have authority to bind

WATERWAY HOUSEBOATS LTD.

Name of corporation (Print)

I also state that WATERWAY HOUSEBOATS LTD. is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

☐ as per the laws of Canada; OR

☒ as per the laws of

BRITISH COLUMBIA

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Signature of Officer or Director

March 1, 2019

Date Mortgage signed (dd-mm-yyyy)

2 - CORPORATION

I _____ state that I have authority to bind

Name and title (Print)

Name of corporation (Print)

I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:

Name of corporation (Print)

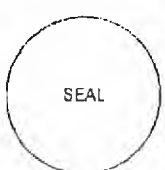
☐ as per the laws of Canada; OR

☐ as per the laws of

Name of province/state (Print)

This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the *Canada Shipping Act, 2001* applicants may be required to provide additional information as requested by the Chief Registrar.

I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the *Canada Shipping Act, 2001*).

Official number (if assigned) 819514	Name of vessel (if assigned) ROXY I	Port of registry VANCOUVER BC
B - DISCHARGE OF MORTGAGE		
INDIVIDUAL		
We, the mortgagee(s) authorize the discharge of the mortgage described above.		
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Signature of mortgagee	
_____ Signature of mortgagee	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
CORPORATION		
I _____ state that I have authority to bind _____		
_____ Name and title (Print)	_____ Name of corporation (Print)	
I also state that _____ is the name of a corporation which legally exists at the date of this Mortgage:		
_____ Name of corporation (Print)		
<input type="radio"/> as per the laws of Canada; OR <input type="radio"/> as per the laws of _____		
_____ Name of province/state (Print)		
This Mortgage must be signed by any Officer or Director of the corporation who has the authority to bind the corporation. Pursuant to Sections 51(2) and 75.01(2) of the <i>Canada Shipping Act, 2001</i> applicants may be required to provide additional information as requested by the Chief Registrar. I understand that it is an offence for a person to knowingly make a false or misleading statement in writing and that the penalty can be a fine or imprisonment or both if found guilty in a court of law (Section 37 of the <i>Canada Shipping Act, 2001</i>).		
_____ Signature of Officer or Director	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	
INDIAN BAND		
_____ Name of Indian Band (Print)	_____ Signature	
	_____ Name of person signing above (Print)	
	_____ Date Discharge of Mortgage signed (dd-mm-yyyy)	

Notes

1. The expressions "mortgagee" and "mortgagor" used in this document include their heirs, successors, assigns, executors, administrators and any other legal representative.
2. This Mortgage must be completed by all of the owners. If jointly owned, all the joint owner(s) must act together.
3. In the case of an Indian Band, the mortgage must be made by person(s) authorized by Band Council Resolution OR by affixing the seal of the Indian Band on this Mortgage.
4. The original mortgage deed must be presented to discharge a mortgage or if not available, by Statutory Declaration.
5. The Authorized Representative is required to report any changes, such as a change in the owner's or a registered mortgagee's name or address, (S. 58 of the *Canada Shipping Act, 2001*).

This is **Exhibit "V"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'AD MTE', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Waterway Houseboats Ltd. v. British
Columbia*,
2019 BCSC 581

Date: 20190416
Docket: S103630
Registry: Kelowna

Between:

**Waterway Houseboats Ltd., Vinco Holdings Ltd.,
Waterway Houseboat Charters Ltd.,
Waterway Vacations Shuswap #76 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #80 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #84 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #85 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #86 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #69 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #75 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #79 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #82 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #58 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #61 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #63 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #59 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #68 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #70 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #72 Limited Partnership
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap #77 Limited Partnership**

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Waterway Vacations Shuswap #78 Limited Partnership
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Waterway Vacations Shuswap Limited Partnership #28
by its General Partner Waterway Partnership Equities Inc.,
Waterway Vacations Shuswap Limited Partnership #30
by its General Partner Waterway Partnership Equities Inc.,
Jeff S. Benson Professional Corporation, Northstar Avlease Ltd.,
Russel Wise, Carolyn Wise, Sundance Boating Corp., Margo Preston
Dwayne Lawson, Willis Enterprises Inc., Bruce Anderson,
Carol Anderson, 0835021 B.C. Ltd., Jerry Charest,
Happy Holiday Ventures, Leo Skerry, Frances Skerry, Grant Morstad,
Maureen Morstad and Reynold Hert

Plaintiffs

And

Her Majesty the Queen in Right of the Province of British Columbia,
The District of Sicamous, Bryan McLaughlin and Constance McLaughlin
Defendants

And

Her Majesty the Queen in Right of the Province of British Columbia,
The District of Sicamous, Bryan McLaughlin and Constance McLaughlin
Third Party Defendants

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment

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Place and Date of Trial:

Kelowna, B.C.
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April 16, 2019

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I. INTRODUCTION

[1] Flooding of creeks, rivers, lakes and other waterways during the annual spring run-off are costly and frequently occurring natural events. They are a serious and expensive problem that can disrupt and sometimes devastate those affected. There are different categories of floods. One of the more serious is called a “debris flood” – a very rapid flow of water in a steep channel that is heavily charged with trees, rocks, sediment and other debris.

[2] The plaintiffs were unfortunate victims of a debris flood on June 23, 2012 (“2012 Flood”) that caused significant damage to their property and houseboat business on Mara Lake in the District of Sicamous. The plaintiffs claim that the 2012 Flood was caused by improper actions taken by the defendants in the aftermath of a similar flood that occurred in July 1997 (“1997 Flood”). Those actions relate to the implementation of several flood recovery projects including creek bed dredging and the reconstruction of a private bridge.

[3] The defendants deny any wrongdoing and say that in their emergency response efforts following the 1997 Flood, they acted in accordance with all applicable statutes, regulations and standards at the time. Given the significant financial constraints and urgency of the situation, the defendants say that their actions in implementing the flood recovery projects were reasonable. They say that the damage caused by the 2012 Flood was inevitable and resulted from naturally occurring phenomenon that would have happened regardless of the 1997 Flood recovery projects.

II. OVERVIEW

[4] Sicamous Creek flows into Mara Lake a few kilometres south of Sicamous, British Columbia. The plaintiffs’ houseboat business and property is located on Mara Lake immediately to the north of Sicamous Creek. The property (“Venco Property”) is owned by the plaintiff Venco Holdings Ltd. (“Venco”) who leases it to the plaintiff Waterway Houseboats Ltd. (“Waterway”), a related company. Waterway has operated its houseboat business at the Venco Property since 2007 when it relocated

from its previous location in Sicamous. Vinco acquired the Vinco Property in 2003 and 2005 from its previous owners, Mr. and Mrs. Maurer (the "Maurers"), who had operated a campground known as the Beachcomber Campground on that property. The Vinco Property is divided in half by Highway 97A into the upper Vinco Property and the lower Vinco Property.

[5] The 1997 Flood caused major damage to the Beachcomber Campground and to Mervyn Road, which is a public road dividing Sicamous Creek to the south and the Vinco Property to the north. Mervyn Road provides public access to a boat launch immediately adjacent to the Vinco Property.

[6] Following the 1997 Flood, certain works were undertaken in and around Sicamous Creek ("Works"). These Works were authorized by the Province and included dredging and armoring the Sicamous Creek channel ("Channel Restoration") and replacing a private bridge ("McLaughlin Bridge") owned by the defendants Bryan McLaughlin and Constance McLaughlin (the "McLaughlins") spanning Sicamous Creek near where the creek enters Mara Lake ("McLaughlin Bridge Replacement"). A previous bridge owned by the McLaughlins had been removed as part of the emergency response to the 1997 Flood after a build-up of trees, rocks and other debris plugging the bridge caused the creek to overflow across Mervyn Road and onto the Beachcomber Campground.

[7] The Works were the culmination of months of consultations, discussions and negotiations between representatives of the Province of British Columbia ("Province"), the District of Sicamous ("District"), the Department of Fisheries and Oceans ("DFO") and, to a lesser degree, the McLaughlins and the Maurers. The Works were completed in the spring of 1998.

[8] Nine years later, Waterway moved onto the Beachcomber Campground property. Five years after that, the 2012 Flood occurred. The 2012 Flood caused significant damage not only to Waterway and the Vinco Property, but to Highway 97A and multiple other properties as well. Days of intense rainfall combined with snowmelt in the Sicamous Creek watershed created a debris flood. Similar to the

1997 Flood, the opening under the McLaughlin Bridge became completely blocked (“Blockage”) causing the creek to overflow its banks onto the Vinco Property and Waterway’s infrastructure. Essentially, the 2012 Flood was a repeat of the 1997 Flood, but with far worse consequences.

[9] The plaintiffs sue the Province, the District and the owners of the McLaughlin Bridge (the “McLaughlins”) in relation to the Works saying that they were improperly approved, designed and constructed and caused foreseeable physical damage and economic loss. The plaintiffs sue in negligence, nuisance and under the *Water Act*, R.S.B.C. 1996, c. 483 (which was in force at all material times of this action).

[10] At the root of this lawsuit is the cause of the 2012 Flood. Specifically, whether the Works played a role or whether the flooding and consequent damage would have happened in any event. In its most basic form, the plaintiffs’ claim is that the Province was negligent in communicating the terms and conditions of approvals issued for the Works and that the District and the McLaughlins did not construct the Works in accordance with their terms.

[11] The plaintiffs say that the Blockage that led to the 2012 Flood occurred when a truck that had fallen into the creek became lodged under the McLaughlin Bridge. This plugged the channel and caused floodwaters to back up and wreak havoc. The plaintiffs say that had the Channel Restoration and McLaughlin Bridge Replacement been properly designed and constructed, the truck would have passed underneath the bridge and the Blockage and resulting flood would not have occurred.

[12] The plaintiffs claim damages for property damage and business losses in the approximate amount of \$10 million.

[13] The defendants deny any liability for the plaintiffs’ property damage and business losses. The defendants’ theory is that the 2012 Flood was a naturally occurring and inevitable event caused by heavy rainfall, snowmelt and high water levels in Mara Lake. They say that substantially all of the damage caused would

have happened in any event of the Works following the 1997 Flood. They say that the Blockage was caused by the unusually high level of Mara Lake at the time.

[14] There are a number of provincial statutes at play in this case, the most important of which is the *Water Act*. Another act of importance in this case is the *Emergency Program Act*, R.S.B.C. 1996, c. 111

III. THE PARTIES

a. The Plaintiffs

[15] There are several plaintiffs in this case. All of them are involved in the Waterway business. Waterway's operations, marina and related infrastructure are located on the 6.61 hectare Vinco Property on the shores of Mara Lake.

[16] Waterway began operating its first fleet of houseboats on the Vinco Property in 2006. The remainder of the fleet and the entire Waterway business moved there in 2007.

[17] While there is no written lease between Waterway and Vinco in evidence, it is clear that Waterway leases the Vinco Property from Vinco. Both Waterway and Vinco are accordingly "owners" within the meaning of the *Water Act*. As such, both Waterway and Vinco are entitled to remedies not available to the other plaintiffs.

[18] The plaintiffs Waterway Vacations Shuswap Limited Partnership #6, 12, 16, 17, 18, 19, 22, 23, 24, 28, 29, 30, 41 and 43, and Waterway Vacations Shuswap #51, 52, 53, 54, 55, 57, 58, 59, 61, 62, 63, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85 and 86 Limited Partnership (collectively "Vacations LP") are limited partnerships. These partnerships are represented in this case by their general partner Waterway Partnership Equities Inc., which is a wholly-owned subsidiary of Waterway.

[19] The plaintiffs Jeff S. Benson Professional Corp., Northstar Avlease Ltd., Sundance Boating Corp., Willis Enterprises Inc., 0835021 B.C. Ltd. and Happy Holiday Ventures are corporations or partnerships. These plaintiffs and Vacations LP

own individual houseboats that make up the majority of Waterway's fleet (currently 66 houseboats) and will be referred to collectively as the "Individual Houseboat Owners".

[20] The plaintiff Waterway Houseboat Charters Ltd. ("Charters") is a wholly-owned subsidiary of Waterway. Although essentially a shell company that plays no active role in the Waterway business, it is named on the written management agreements between Waterway and the Individual Houseboat Owners. In most cases, Charters is nominally a party to these agreements as Waterway's agent.

[21] The structure and relationship among the various plaintiffs is somewhat complicated. Generally speaking, the houseboats are owned by individual or corporate entities and are managed by Waterway. Waterway provides the staff and equipment required to operate the business. By all outside appearances, the houseboats belong to Waterway. Waterway has day-to-day control over each houseboat and receives a management fee of 55% for all but three houseboats; it receives 60% on those three.

b. Her Majesty the Queen in Right of the Province of British Columbia

[22] The Province administers provincial laws including the *Water Act* and the *Emergency Program Act* and regulations made under those Acts.

c. The District of Sicamous

[23] The District is a municipal corporation pursuant to the *Local Government Act*, R.S.B.C. 1996, c. 323. It has its office at 446 Main Street in Sicamous, British Columbia. The lower portions of Sicamous Creek are located within its municipal boundaries.

d. Bryan McLaughlin and Constance McLaughlin

[24] The defendant McLaughlins are the registered owners of lakefront property located on Mara Lake ("McLaughlin Property"). They purchased the McLaughlin Property in 1987. Sicamous Creek enters Mara Lake at the north end of the McLaughlin Property.

[25] The McLaughlins live in Alberta. The McLaughlin Property is used as a summertime vacation property. Mr. McLaughlin is a mechanical engineering technologist. Since 1984, he has done consultant work in the hydroelectric industry and has dealt with a number of engineers involved in that field.

[26] At all material times, the McLaughlin Property had no permanent structures.

IV. THE PLAYERS

[27] While there were many persons involved in the events surrounding the 1997 Flood, its aftermath, the Works and the 2012 Flood, it is helpful at this point to mention some of those people who played a significant role. Their names and roles are detailed in the chart below:

NAME	ROLE
Paul Doyle	<ul style="list-style-type: none"> ▪ Testified at trial having been called by the plaintiffs under the adverse witness rule ▪ A professional engineer, now retired, he was employed through most of his career by the Ministry of the Environment's Water Management Branch's engineering section ("Water Branch") for the southern interior ▪ He was the senior engineer and head of the Water Branch based in Kamloops for approximately twenty years ▪ He was very experienced in the area of water hydrology ▪ Over his career, he had issued thousands of <i>Water Act</i> approvals and in doing so, used his education, training and experience in determining the appropriate mandatory conditions that should be attached to each one ▪ In issuing approvals, he took into account various concerns including future risks of flooding ▪ He was the Water Branch's representative in charge of approving the Channel Restoration and McLaughlin Bridge Replacement (more specifically, he was the Province's engineer appointed under s. 9 of the <i>Water Act</i> who issued the Approvals)
Bob Costerton	<ul style="list-style-type: none"> ▪ Did not testify ▪ Also a professional engineer who worked with the Water Branch in Kamloops ▪ Mr. Doyle was his supervisor
Allan Zackodnik	<ul style="list-style-type: none"> ▪ Did not testify ▪ Also a professional engineer – he was the Water Branch's Regional Water Manager for the Southern Interior and as such was the highest ranking official in the Water Branch ▪ He was Mr. Doyle's superior
Karen Williams	<ul style="list-style-type: none"> ▪ Testified at trial having been called by the plaintiffs under the adverse witness rule

	<ul style="list-style-type: none"> ▪ She was the District's municipal administrator from 1996-2008 ▪ Following the 1997 Flood, she was the District's representative who negotiated with Mr. Doyle in relation to the Works and acted as a conduit between the Province and the McLaughlins ▪ Visited the site following the 1997 Flood and observed bank erosion and debris in the creek bed and damage to Beachcomber Campground, the marina and Mervyn Road (all were littered with flood debris including sediment, branches, trees and rocks) ▪ Observed how the debris had blocked the creek channel including upstream from the McLaughlin Bridge
Louise Maurer	<ul style="list-style-type: none"> ▪ Testified by videoconference from Calgary ▪ From 1988 to 2003, she owned and operated the Beachcomber Campground and then sold it to Vinco ▪ Witnessed the destruction caused by the 1997 Flood and was an advocate for the Channel Restoration so that she could get her Beachcomber Campground business up and running again ▪ Wrote letters to both Ms. Williams and Mr. Doyle urging them to remedy the flooding issue
Grady MacDonald	<ul style="list-style-type: none"> ▪ Did not testify ▪ Employed by the District as its public works foreman and reported to Ms. Williams ▪ At all material times he was the District's representative at site meetings ▪ Oversaw the Channel Restoration
Mike Whitehead	<ul style="list-style-type: none"> ▪ Testified at trial ▪ Has been a heavy equipment operator and contractor all of his working life and at the time of trial was 58 years old ▪ Since 1985, he has lived on property on the south bank of Sicamous Creek upstream of Highway 97A; in the time he has lived there, he has only seen two floods in Sicamous Creek, 1997 and 2012, both of which were equally devastating ▪ In 1998, he was hired to perform the Channel Restoration which involved removing debris and sediment from the creek bed and cleaning up the creek banks and placing riprap ▪ His instructions came from various Ministry representatives who had designed the Works ▪ He was not asked to put the creek back to its pre-1997 Flood condition but followed the instructions he was given ▪ Prior to the 2012 Flood, he purchased a new Dodge 1500 short box crew-cab pick-up truck ("Truck") and had parked it on his property about 50 feet from the bank of Sicamous Creek ▪ He was out of town during the 2012 Flood – upon his return, the Truck and about 50 feet of his property were gone together with a row of some 20-30 large trees ▪ The Truck was later found downstream from his property mangled and destroyed ▪ For as long as he had lived on his property, the Sicamous Creek bed had always been much wider upstream of the Highway 97A Bridge than downstream of it
Gord Varszegi	<ul style="list-style-type: none"> ▪ Testified at trial

	<ul style="list-style-type: none"> ▪ He was Waterway's dock manager in 2012 and was present during the 2012 Flood ▪ Observed the flooding, took photographs and videos of what occurred and testified as to timing of various events
Gary Bens	<ul style="list-style-type: none"> ▪ Testified at trial about his observations of the 2012 Flood ▪ Witnessed the 2012 Flood from his property on the north bank of Sicamous Creek some distance upstream and east of the Highway 97A bridge ▪ Observed that at approximately 3:30 pm on June 23, 2012, Sicamous Creek was dark brown, flowing extremely fast, and eroding the south bank of the channel along Mr. Whitehead's property ▪ Stated that by 6:00 pm, the flow of the creek appeared to have peaked and stayed at a relatively steady level through 9:00 pm ▪ Stated that between 6:00 and 9:00 pm the creek appeared to be "breathing" but was not getting higher ▪ By 9:30 pm, he believed the creek had stabilized and the risk of flooding to his property had passed ▪ He last checked his property at 10:30 pm and noted water flowing through his carport prompting him to leave his property ▪ As he did, he noted about an inch of water flowing down his road
Lloyd Courage	<ul style="list-style-type: none"> ▪ Did not testify ▪ He is a professional engineer practising in Alberta ▪ He visited the McLaughlin Property at Mr. McLaughlin's behest in July 1997 and provided Mr. McLaughlin with an engineering opinion for the reconstruction of the McLaughlin Bridge dated July 31, 1997 that was in turn given to Mr. Doyle who received it in early September 1997
Bob Harding	<ul style="list-style-type: none"> ▪ Did not testify ▪ He was the representative of the federal DFO involved in the approval process for the Works ▪ He attended the February 26, 1998 site meeting and prepared sketches for the Channel Restoration ("Harding Sketches")
Chris Duffy	<ul style="list-style-type: none"> ▪ Testified at trial and was the only non-expert witness called by the Province ▪ Since 2008, he has been the executive lead for Emergency Management British Columbia and testified about the <i>Emergency Program Act</i>

V. CHRONOLOGY AND FINDINGS OF FACT

[28] The parties filed a comprehensive and detailed Agreed Statement of Facts wherein many facts, documents, photographs, videos and events were agreed to. I will not attempt to repeat them but those facts that are helpful to my findings will be interwoven into the Chronology and Findings of Fact below.

a. Pre-2012 Flood

[29] In 1986, the original McLaughlin Bridge was constructed with appropriate approvals from the Province.

[30] The 1997 Flood began on July 12, 1997. The opening beneath the McLaughlin Bridge became obstructed by debris and the Sicamous Creek overflowed its banks onto Mervyn Road and the Beachcomber Campground. The channel bed was infilled by three to five feet of sediment, gravel, rocks and other material over a distance of approximately 600 metres upstream. Mervyn Road was washed out.

[31] On July 21, 1997, the creek started to swell again threatening further flooding. Debris had again started to pile up at the McLaughlin Bridge. Ms. Maurer called emergency services who brought in an excavator to clear the blockage. Ultimately, the decision was made by provincial officials to remove the McLaughlin Bridge as a preventative measure. Once removed, the water level in the creek dropped immediately and dramatically.

[32] Following the 1997 Flood, the Province approved and funded the Channel Restoration and the McLaughlin Bridge Replacement as well as other repairs to Mervyn Road. The Province provides financial relief to qualifying individuals or local governments for damages caused by natural disasters. The funding program is known as the Provincial Emergency Program ("PEP"). The legislation authorizing that assistance is the *Emergency Program Act* and the *Compensation and Disaster Financial Assistance Regulation*, B.C. Reg. 124/95 [*DFA Regulation*].

[33] Per s. 5(2) of the *DFA Regulation*, the Province can also, at its discretion, compensate persons who have had real or personal property damaged as a result of government action taken in response to an emergency or disaster.

[34] By regulation, PEP does not allow for any funding over and above what is needed to restore property to its pre-emergency condition. Put another way, it does

not pay for the cost of improvements. The purpose of the relief in this case was to fund the cost of returning damaged property back to pre-1997 Flood conditions.

[35] In late July 1997, Mr. McLaughlin engaged Mr. Courage (the engineer contact he had in Alberta) who attended the site and provided his opinion that the bridge could be replaced at its previous height provided that Sicamous Creek was dredged to restore the bed to its pre-flood condition and maintained at that level in the future. He did not recommend raising the bridge as an alternative to excavation of the creek bed. Mr. Courage's engineering expertise did not include river/stream hydrology.

[36] On July 31, 1997, Mr. Doyle made his first visit to the site. He spoke to Ms. Maurer who expressed her concerns about the infilled creek bed and the potential for future flooding. It was immediately clear to Mr. Doyle that the McLaughlin Bridge was in a terrible location and he questioned whether it should be replaced at all. Based on his years of experience, his judgment was that if the bridge was to be replaced, it would have to be much higher than it was previously. A minimum one metre bridge height increase was a general rule of thumb developed by the Water Branch over the years in circumstances where bridges were removed due to flood blockages.

[37] Mr. McLaughlin was anxious to have his bridge replaced as soon as possible. Pursuant to the *Water Act*, he faxed a notification of reinstallation for the bridge to Mr. Costerton on August 6, 1997 (Mr. Doyle was out of the office at the time). He attached a sketch of the new proposed bridge as provided by Mr. Courage.

[38] The following day, Mr. Costerton replied with a letter stating that the bridge could be reinstalled without a *Water Act* approval provided it was "at least 1 metre higher" than it previously was and provided the new bridge complied with regulations under the *Water Act*, specifically Part 7 of the *Water Regulation*, B.C. Reg. 204/88 [*Water Regulation*] ("Mr. Costerton's August 7, 1997 letter"). Those regulations are important because, as will be discussed below, s. 44(1)(b)(iii) of the *Water Regulation* required that the replacement bridge be capable of handling a "1 in 200 year flood" and high enough to allow the free passage of a debris flood.

[39] Neither the McLaughlins nor the District appreciated the onerous significance of this regulation.

[40] On August 7, 1997, representatives of the District met to discuss the 1997 Flood and whether it was the District's responsibility to replace the McLaughlin Bridge as the Province had suggested. Ms. Williams expressed her concerns about future liability for the bridge and recommended that the onus be placed on Mr. McLaughlin with the District assisting him in a sponsored PEP funding application. The committee agreed.

[41] On September 3, 1997, Mr. Doyle was back in the office and reported his opinion to Mr. Zackodnik that a future flood of Sicamous Creek was a very real possibility and that Mr. Courage's recommended bridge reconstruction did not take this significant risk into account.

[42] On September 12, 1997, Mr. Zackodnik wrote to Ms. Williams advising that the Province would not be handling the Channel Restoration, but would assist with the necessary s. 9 *Water Act* approvals. Respecting the McLaughlin Bridge Replacement, he stated:

The only technical issue with the bridge is that for the bridge to go back, it must be raised by one metre if it is to remain in its existing location.

[43] On September 16, 1997, Mr. Doyle wrote to the Ms. Maurer explaining that the District would be undertaking a large scale lowering of the Sicamous Creek bed to be funded by the PEP. It was thought that dredging of some 1.5 metres of material would be required to restore the creek bed back to its previous depth.

[44] On December 18, 1997, the District received its funding approval from PEP for the Channel Restoration, McLaughlin Bridge Replacement and Mervyn Road repairs. The Channel Restoration funding was limited to restoring the creek bed to its pre-flood condition without any enhancements. The Mervyn Road repair funding was limited to the portion needed to accommodate the McLaughlin Bridge Replacement.

[45] On January 3, 1998, Ms. Maurer wrote Ms. Williams with her concern over the McLaughlin Bridge. Specifically, she did not want the height of Mervyn Road to be increased because it would be detrimental to her business as larger recreational vehicles would not be able to access portions of her campground. She copied that letter to Mr. Doyle. Negotiations between Ms. Williams and Mr. Doyle began in earnest regarding the height of the new McLaughlin Bridge. To accommodate Ms. Maurer's concerns, Ms. Williams asked if the Sicamous Creek bed could be dredged six feet rather than three feet to allow the McLaughlin Bridge to be reinstalled at its original elevation. In a subsequent telephone discussion, Mr. Doyle indicated to Ms. Williams that he may accept a 0.6 metre increase in the McLaughlin Bridge elevation (rather than a one metre increase) to accommodate Ms. Maurer's concerns.

[46] Under the *Water Act*, any changes in and about a stream must be approved by the Water Branch. On February 4, 1998, Mr. Doyle sent blank *Water Act* approval applications to Ms. Williams ("Applications"). In order to complete the Applications, design sketches and cross-sections setting out the proposed work were required.

[47] Ms. Williams was anxious to have the Works completed as soon as possible. In addition, there was a DFO-mandated deadline of April 1, 1998, for all works within Sicamous Creek. To expedite matters, she acted as a liaison between the Province and the McLaughlins. The issue of the height of the McLaughlin Bridge Replacement in relation to the height of the new Mervyn Road and Channel Restoration became a hot topic of debate between Mr. Doyle and Ms. Williams. On February 4, 1998, Ms. Williams faxed Mr. Doyle regarding the McLaughlin Bridge Replacement. In part her letter stated:

As discussed the District is not representing the private interests of Mr. McLaughlin in the replacement of the bridge, we are acting as a resource in conjunction with our full claim for flood recovery. We will not accept the liability associated with the replacement of this bridge on private property but rather we are hoping to acquire a consensus that all parties will benefit by lowering the bridge to accommodate the road works without negatively impacting the [Maurers]. We hopefully will not be in a position to debate the decision for removal of the bridge or prior creek restoration. I am looking for a win-win and I believe my request will do just that. ...

I am hoping to bypass the bureaucratic assessment of the 1-foot difference in bridge elevation considering the initial height requirement was also a decision outside our authority. I am reluctant to debate this issue further considering the potential for political and private property owner conflict and ramifications.

[48] On February 13, 1998, Ms. Williams again wrote to Mr. Doyle stating that the "property owners" had agreed to a 0.6 metre height increase for the McLaughlin Bridge Replacement and had accepted the plans for the Mervyn Road repairs. She stated that the District was hesitant to proceed with the creek dredging and requested the Province's approval as soon as possible.

[49] On February 18, 1998, Ms. Williams sent the completed Applications to Mr. Doyle stating:

...it is imperative considering the current weather conditions and contractor availability to commence the creek works on Monday, Feb 23/98.

[50] She sought approval to commence the Works immediately but neglected to put forth any design sketches or cross-sections as required by the Applications.

[51] On February 25, 1998, Mr. Doyle wrote Ms. Williams stating that the Province was still awaiting design sketches to properly adjudicate the Applications. A site meeting with Mr. MacDonald (the District's public works foreman) and Mr. Harding (a DFO representative) was planned for the next day.

[52] The February 26, 1998 site meeting took place the next day. Present were Mr. Doyle, Mr. Harding, Mr. MacDonald, Mr. Whitehead and a representative of the Ministry of Transportation and Highways named Mr. Dodds. Of those present, Mr. Doyle was the only professional engineer and the only one authorized to approve the Works. As Mr. Doyle testified, "the buck stopped with him".

[53] The purpose of the February 26, 1998 site meeting was to develop a consensus amongst those present and come to some sort of agreement or common understanding of the work that was to be done. Mr. Harding put together sketches of the Channel Restoration that were meant to guide the remediation works ("Harding

Sketches"). Other than the Harding Sketches, there were no design or cross-sectional sketches ever provided.

[54] On March 6, 1998, Mr. Doyle issued approvals pursuant to s. 9 of the *Water Act* to the District (the "Channel Restoration Approval") and to Bryan McLaughlin (the "McLaughlin Bridge Approval") (collectively, the "Approvals"). He sent the McLaughlin Bridge Approval to Mr. McLaughlin care of the District. The cover letter to Mr. McLaughlin stated:

Your bridge is in a tenuous location on the creek and hopefully the additional height above the bed may reduce future problems with obstructions.

[55] Mandatory conditions attached to the Channel Restoration Approval included:

- a) Condition 'B' - requiring riprap protection, specified berm removal and specified dredging of the channel as "refined during a joint field inspection on February 26, 1998 with the maximum channel bed dredging of 1 metre";
- b) Condition 'C' - requiring the Channel Restoration to comply with the Harding Sketches prepared during the February 26, 1998 site meeting;
- c) Condition 'D' - requiring the Channel Restoration to be completed by April 1, 1998;
- d) Condition 'F' - requiring the Channel Restoration to be conducted in accordance with "mutually agreed conditions" during the February 26, 1998 site meeting with the final channel profile being hydraulically stable;
- e) Condition 'L' - requiring the riprap to be angular in shape and suitably graded and sized to resist movement by freshet (spring run-off) flows; and
- f) Condition 'M' - requiring the completed protected channel to have a cross-sectional area no less than its present cross-sectional area, meaning the channel could not be smaller than it was before the 1997 Flood.

[56] Mandatory conditions attached to the McLaughlin Bridge Approval included:

- a) Condition 'C' - requiring all works to be designed by a qualified professional engineer and to be *at least* 0.6 metres higher than the lowest point of the previous bridge;
- b) Condition 'H' - requiring that the District approve the bridge design; and
- c) Condition 'P' - requiring that appropriate design methods and construction techniques for the site conditions be utilized.

[57] After the Approvals were issued, the District and the McLaughlins each arranged for independent contractors to carry out the Works.

[58] Both Approvals also repeated the wording of s. 21 of the *Water Act* stating that the District and Mr. McLaughlin were respectively required to make "full compensation" for any damage or loss resulting from the Works. The full import of s. 21 is discussed later in these reasons.

[59] Mr. Doyle did not like the change to the height requirement (from *at least* one metre to *at least* 0.6 metre) but, in light of the other conditions attached to the Approvals, he was prepared to agree to it. In other words, he was prepared to agree to the *at least* 0.6 metre height increase provided that a qualified professional engineer signed off on it. He considered Condition 'H' (the requirement that the District approve the design) to be an important back-up provision to Condition 'C'. In his mind, this meant that two qualified professional engineers would be involved in approving the height of the replacement bridge.

[60] Upon Ms. Williams learning of Condition 'H' on March 19, 1998, she faxed Mr. Doyle referring to Mr. Costerton's August 7, 1997 letter stating that no s. 9 *Water Act* approval was required for the new bridge. Further, that the District would not accept responsibility for the McLaughlin Bridge Replacement.

[61] Throughout, Ms. Williams and Mr. McLaughlin were under the impression that because the Province had agreed to a minimum height increase of 0.6 metres

(rather than the *at least* one metre increase it had earlier required), the Province had assumed responsibility for determining the height. Mr. Doyle, however, was under the impression that the District and the McLaughlins each bore that responsibility.

[62] The District hired Mr. Whitehead to perform the Channel Restoration. It was completed by the April 1, 1998 deadline. On April 1, 1998, Mr. Doyle made a site visit. He did not like what he saw because the end result was a channel that was too narrow and too constricted. Further, he noted that improper riprap had been used. He foresaw future problems and recorded his thoughts in file notes dated April 2, 1998 stating:

... Found the finished creek channel to tight (bottom < 3m wide) in straight reach next to Mervyn Rd. Round rock (mixed with angular) has crowded the channel reducing the conveyance as the banks were protected. I predict in a big flood that the banks of round rock will collapse into channel & recreate a scenario similar to 1997. Dredged depth is nowhere near a metre in the reach – maybe only 0.3 m (or less?) at McLaughlin bridge. Floating debris or collapsed round rock banks may cause renewed problems. MOTH has certainly protected [right] abutment & bridge. This may tend to throw flow against [left] bank [down stream] & start this giant pile of round rock unravelling during high water.

[63] Also on April 2, 1998, Mr. Doyle faxed a response to Ms. Williams' March 19, 1998 letter stating that a *Water Act* approval was, in fact, required due to the continued vulnerability of the McLaughlin Bridge at that location. He stated:

I do not like the bridge at that location and have only approved the bridge replacement because of the unique set of circumstances which exist at McLaughlin's lot. If the new bridge fails or causes a problem in the future, I will oppose any further replacement.

[64] The District's response came swiftly. On April 6, 1998, Ms. Williams went over Mr. Doyle's head, writing to Mr. Zackodnik and making it clear that the District would assume no responsibility for the McLaughlin Bridge Replacement. She stated in part:

Despite earlier agreement that it was not required, and the District's position in assisting with the application process for replacement of the [McLaughlin Bridge], Paul Doyle insisted that application be made ...

The approval is now before us ... and I note that Item H 'Approval of the bridge design is required from the District of Sicamous'. The District has stated on many occasions that it accepts NO RESPONSIBILITY for

replacement of this bridge. We have made considerable effort thru this process to accommodate all the necessary works to remediate the creek, upgrade the road and protect private properties.

[65] The following day, Ms. Williams wrote Mr. Doyle reiterating that the District would not be giving any approval as contemplated by Condition 'H' and that she believed Mr. McLaughlin had met the remaining conditions of the McLaughlin Bridge Approval. She ended the letter by stating that in her view, responsibility for the McLaughlin Bridge rested with the McLaughlins.

[66] On April 14, 1998, Mr. Zackodnik directed Mr. Doyle to "sort out the controversy", "clear the books" and get the Works completed. Mr. Doyle took Mr. Zackodnik's direction to "clear the books" to mean that he was to forego his engineering judgment and, as Mr. Doyle put it, "get this approval out of the way, over and done with, signed".

[67] Mr. Doyle accordingly amended the McLaughlin Bridge Approval by removing Condition 'H'. That left Conditions 'C' and 'P' requiring that the McLaughlin Bridge Replacement be designed by a qualified professional engineer according to the specifications set out in those conditions.

[68] He telephoned Mr. McLaughlin and told him about the amendment. Following these discussions, he wrote a memo to the file stating in part:

...this should satisfy everyone's concerns (until the next flood).

My site visit...showed that channel was too constricted by rip rap, which is erodible, upstream of McLaughlin Bridge site and blockage of the channel is likely when high flow next occurs.

[69] Meanwhile, Mr. McLaughlin hired a mechanical engineer, Mr. Norlander, to design the superstructure and abutments of the McLaughlin Bridge Replacement. Thinking that the design height came from Mr. Doyle, Mr. McLaughlin's instructions to Mr. Norlander were that the new bridge had to be reinstalled *exactly* 0.6 metres higher than the previous bridge. Mr. McLaughlin retained an independent contractor to reinstall the bridge and provided him with Mr. Norlander's engineering plans.

[70] Thus, the McLaughlin Bridge Replacement was completed in May 1998 without the involvement of a professional engineer qualified in river hydrology and was exactly 0.6 metres higher than the previous bridge. Mr. McLaughlin received full PEP reimbursement for the cost of the bridge replacement on August 26, 1998.

b. The Sicamous Creek Watershed Assessment

[71] In 1998 and 1999, a Sicamous Creek watershed assessment was conducted by Dobson Engineering Ltd. to determine watershed conditions at that time. The assessment was also conducted to determine the effects of past land-use practice and the potential impacts from proposed forest development. A report called "Interior Watershed Assessment for the Sicamous Creek Watershed" was prepared by Mr. Michael Milne, a forest hydrologist with Dobson Engineering Ltd. ("Dobson Report"). It was presented to a Watershed Assessment Committee that included representatives of the Province and District. One of Mr. Milne's recommendations was that the Sicamous Creek channel be monitored for destabilization and channel infilling. Another was that the McLaughlin Bridge be raised to permit passage of floating debris.

[72] One of Mr. Milne's concerns was that the McLaughlin Bridge was installed too low and that the creek channel between Highway 97A and Mara Lake was too narrow. He was particularly concerned that the upstream water channel was twice as wide and twice as deep as the downstream channel. That, combined with the height of the McLaughlin Bridge, would be insufficient to accommodate the volume of water and debris should, as expected, another flooding event similar to the 1997 Flood occur. Without modifications, Mr. Milne's view was that in a similar flooding event, these design errors would cause the banks to destabilize, plug the channel underneath the McLaughlin Bridge and flood neighbouring properties.

[73] The Dobson Report was an ominous precursor of the 2012 Flood. Mr. Milne's concerns were similar, if not identical, to those earlier expressed by Mr. Doyle.

c. The EBA Reports

[74] Waterway relocated to the Vinco Property in 2007. In addition to building the infrastructure to operate a houseboat business, Vinco investigated the viability of a mixed commercial and residential development on the Vinco Property. In order to obtain the required government approvals, Vinco commissioned geotechnical engineering reports from EBA Engineering Consultants Ltd. ("EBA"). Those reports, dated September 8, 2006 and June 1, 2007 (together the "EBA Reports") warned that the Vinco Property was at a moderate to high risk of debris flooding from Sicamous Creek. EBA's review of historical flood events disclosed that Sicamous Creek had experienced debris floods at a frequency of one in every 20 years or so. EBA recommended that if a development project were to proceed, flood mitigation measures would be required:

Based on our interpretation of the data, it is our opinion that the subject property situated below Highway 97A and adjacent to Sicamous Creek, is in a moderate to high risk location and that mitigation measures for protection would be necessary for the development as laid out. Below the highway, the buildings may be subject to direct or indirect debris flood impacts consisting of sediment and debris deposition and scour.

[75] EBA concluded:

Proposed development of the subject property is situated on the fan of Sicamous Creek. Geotechnical hazards, namely flooding, debris flow, and debris flood, are addressed in this report to accompany the environmental impact assessment and Development Permit application.

Based on the hazard assessment, the following conclusions are presented.

- Sicamous Creek is judged to be subject to debris flood, rather than debris flow, and the hazard is considered to be moderate to high;
- The risk of flood or debris flood impact to the subject property is considered to be low (above Highway 97A) and moderate to high (below Highway 97A). The potential for channel avulsion along the fan is considered relatively low due to the incised nature of the channel;
- Based on channel gradient, a large proportion of sediment and organic debris will likely be deposited in the channel upstream of the fan or within the first several hundred metres of the fan apex, upstream of the subject property;
- Sediment deposition across the fan would depend on channel constrictions such as the highway bridge and two other private bridges, stream bank weaknesses, and local topography. For the

subject property, overbank flooding is most likely to occur upstream of the driveway bridge without mitigation; and,

- Mitigation measures, such as elevation through fill placement, erosion protection along Mervyn Road, and possible construction of a flood spillway, could reduce the hazard to properties and infrastructure on the subject property. The detailed design of the mitigation measures should consider the impact on adjacent properties.

[76] In short, the EBA Reports were a warning to Vinco that without flood mitigation measures in place, the Vinco Property could expect to experience flooding starting upstream of the McLaughlin Bridge. Despite this warning, Waterway relocated its business to the Vinco Property with no flood mitigation measures being considered or taken.

d. The 2012 Flood

[77] In the early afternoon of June 23, 2012, the waters in Sicamous Creek began to swell. The timing of events thereafter is critical to an overall understanding of this case.

[78] The level of Mara Lake was high in the days preceding the 2012 Flood. Portions of the Vinco Property (including Waterway's administration building) were below the lake water level and were protected by sandbagging. Waterway's operations continued despite the high water levels.

[79] The Sicamous Creek watershed experienced heavy rainfall on June 23, 2012 which, combined with a period of warm weather and consequent rapid snowmelt, caused high flows in Sicamous Creek charged with sediment and debris. The same phenomenon occurred in a number of other creeks in the area at the same time.

[80] I accept the evidence given by Mr. Varszegi and Mr. Bens on their observations of what occurred and of the timing of those events. At approximately 3:00 pm on June 23, 2012, the creek was raging. The creek level had increased significantly from its level earlier in the day. The flow was dark brown in colour and forceful enough to move and flush large boulders, entire full size trees and their root systems, and other debris into the lake. Trees slammed into McLaughlin Bridge,

stalled briefly and then were forced underneath and into the lake. By 3:30 pm, there was a large mass of trees and debris floating in deep water in the lake to the north of the creek, rotating clockwise. The flow of the creek was like a "jet" of water shooting into Mara Lake and was not mixing with the lake water. The "jet" of water shot straight into the lake and then abruptly disappeared as it reached deep water. I accept that this means the flow maintained a substantial velocity until it reached deep water in the lake.

[81] At that point, there was still approximately 20 inches of clearance between the top of the creek water and the underside of the McLaughlin Bridge.

[82] By approximately 4:45 pm, the gap between the underside of the McLaughlin Bridge and the top of the creek flow had narrowed to about ten inches. The flow was extreme and continued to flush boulders, rocks, sediment, trees, branches and other debris into the lake. By 5:30 pm, the level of the outflow was elevated above the level of Mara Lake. At this point, Sicamous Creek was neither backing up nor spreading out into the lake. This elevation was later described by one of the plaintiffs' experts, Dr. Church, as "supercritical flow" meaning that much, if not all, of the material entrained in it was flushed into deep water before dropping out into the lake.

[83] Shortly before 6:00 pm, the top of the flow was lapping against the underside of the McLaughlin Bridge. Intermittently, debris was trapped by the bridge, temporarily plugging the flow and causing water to spill over the channel's north bank until the trapped debris was forced under the bridge and flushed downstream into the lake by the sheer power of the flow.

[84] Meanwhile, upstream from the Highway 97A Bridge, the creek's banks were eroding and slumping significantly causing trees to fall into the flow and be carried downstream. This included the creek banks and trees along Mr. Whitehead's property. Erosion on the south bank was more significant than what had occurred during the 1997 Flood.

[85] The Truck arrived at the McLaughlin Bridge at 5:48 pm. Prior to its arrival, the debris flow was contained within Sicamous Creek's channel and was able to pass under the McLaughlin Bridge, albeit with some overbank spillage. I conclude that the Truck immediately plugged the channel after slamming into the upstream side of the McLaughlin Bridge and becoming lodged underneath it. Being carried by the very fast and powerful flow, more debris arrived at the now-plugged bridge. The debris piled up on its upstream side and exacerbated the Blockage. Flooding was immediate.

[86] A major part of the flow then spilled over the north bank, across Mervyn Road and onto the Vinco Property (later defined as Avulsion 'A'). The infilling of the channel caused by the Blockage resulted in the creek bed becoming increasingly shallower. Soon, there was no channel left and the flow went wherever it found least resistance, namely across the Vinco Property.

[87] How far upstream this infilling occurred and whether it progressed far enough to cause another major avulsion that occurred upstream of the Highway 97A Bridge (later defined as Avulsion 'D') were significant issues at trial.

[88] The peak flow of the creek occurred at approximately 6:00 pm (shortly after the arrival of the Truck) and lasted for about three hours before it began to decline in volume and velocity. Had the Blockage not occurred, I conclude the creek would have continued to flush the majority of the flow during that time into Mara Lake.

e. The Avulsions

[89] An "avulsion" is the lateral displacement of creek water from its current channel into a new channel. In other words, an avulsion occurs when a creek cuts a new channel. There can be partial avulsions and complete avulsions. Over the Sicamous Creek's recorded history, it has experienced many complete avulsions with the creek cutting new channels in its alluvial fan.

[90] During the trial, the parties referred to five distinct avulsions that occurred over the June 23-24, 2012 flooding timeframe as Avulsions 'A', 'B', 'C', 'D', and 'E'. I will do the same:

- a) Avulsion 'A' – the overbank flow immediately upstream of the McLaughlin Bridge and below the Highway 97A Bridge that flowed in a northerly direction over the Vinco Property. It started at about 5:50 pm on June 23, 2012, growing increasingly in volume and size as it progressed upstream towards the Highway 97A Bridge;
- b) Avulsion 'B' – the flow of Sicamous Creek that resulted in water running through Mr. Bens' carport on the south side of Two Mile Road, starting near the apex of the fan (about 300 metres upstream of the Highway 97A Bridge), and that cut back into Sicamous Creek's original channel to the west of Mr. Bens' house. It occurred later in the evening on June 23, 2012;
- c) Avulsion 'C' – the flow on the east side and immediately upstream of the Highway 97A Bridge that followed the existing ditch on the east side of the Highway 97A embankment and toward Two Mile Creek Road, eventually crossing the highway onto and over the lower portion of the Vinco Property at its north end and into Mara Lake;
- d) Avulsion 'D' – the flow from approximately 160-170 metres upstream of Highway 97A that ran down part of Two Mile Road, across the upper Vinco parking lot east of Highway 97A, and cut through Highway 97A onto the northern portion of the lower Vinco Property; and
- e) Avulsion 'E' – the flow that began later on during the flood at the intersection of Highway 97A, Mervyn Road and Two Mile Road. At that point, the entire flow of Sicamous Creek, which was greatly reduced, had avulsed into the channel created by a combination of Avulsions 'C', 'D' and 'E'. For the balance of these reasons, I will describe the channel that resulted from these three avulsions simply as Avulsion 'D'.

[91] There is broad consensus amongst the parties that most of the damage to the Vinco Property was caused by Avulsions 'A' and 'D'.

[92] How each of the avulsions were caused and whether the Channel Restoration or the McLaughlin Bridge Replacement played a role in their creation was a main focus of the trial. It was also the subject of detailed, technical and lengthy expert evidence on both sides, which will be summarized in the next section of these reasons.

VI. THE LIABILITY EXPERTS

[93] The parties called a number of experts in the field of river hydrology to provide their opinions on the sequence of events that occurred during the 2012 Flood and to explain their views on whether the Channel Restoration and/or the McLaughlin Bridge Replacement made any difference to the damage caused to the Vinco Property.

[94] In short, the plaintiffs' experts opined that the combination of the McLaughlin Bridge Replacement and the Channel Restoration caused, in particular, Avulsions 'A' and 'D'. They say that without the Blockage, the avulsions and subsequent flooding would not have occurred.

[95] The defendants' experts opined that the avulsions occurred independent of the Blockage and that the resultant damage to the Vinco Property would have occurred in any event of the Works.

a. Plaintiffs' Experts

[96] The plaintiffs called three experts: Dr. Michael Church, Mr. Brian LaCas, and Dr. Russell Smith. Each expert was qualified in his respective field.

i. Dr. Michael Church

[97] Dr. Church is a registered professional geologist and Professor Emeritus of geography at the University of British Columbia where he has taught for 38 years. His research expertise is in fluvial geomorphology (the scientific study of the

landforms on the Earth's surface, including rivers and streams and the processes that have fashioned them). He also has expertise in surface water hydrology and fluvial sedimentology. In other words, he understands the science behind the flooding of creeks and rivers.

[98] He has impressive credentials and is eminently qualified in his areas of expertise. I had no trouble qualifying him. He presented as an objective, careful, knowledgeable and highly academic witness in his field of study.

[99] In a nutshell, Dr. Church's opinion is that the 2012 Flood damage to the Vinco Property was caused by the Blockage. When the Blockage occurred, the flow of Sicamous Creek, which was raging at the time, was forced to slow and almost stop when it reached the Blockage. It was no longer able to transport the debris that it was carrying. Thus, rocks, sediment and other entrainments dropped out of the flow and were deposited in front of the Blockage causing a reduction in the channel's depth and an inability to accommodate the flood waters.

[100] The shallower depth in turn caused the upstream flow to decrease in velocity and the issue snowballed. Sediment and other material dropped from the flow as the velocity decreased and a "sediment wedge" was created in the channel. Ultimately, the flow had nowhere to go but overbank, breaching the north bank and flooding the Vinco Property.

[101] Dr. Church assumed that the flood reached its peak at 6:00 pm on June 23, 2012, and that, because of the sheer force of the flow, no aggradation would have occurred at the area of the McLaughlin Bridge prior to the Blockage. Despite the significant erosion going on upstream, he opined that most of the material would have been flushed into the lake. In other words, but for the Blockage, any flooding of the Vinco Property would have been minimal. He likened the flow process to a "waterslide" whereby the force of the water and slope "jettisoned" the entrained material into the standing lake water, not slowing down until deep water was reached.

[102] Thus, in his opinion, the decisive event that caused the flood damage was the Truck plugging the McLaughlin Bridge. In the absence of the McLaughlin Bridge, or had the bridge been higher, the Truck would have kept moving and been carried into the lake.

ii. Mr. Brian LaCas

[103] Mr. LaCas is a professional engineer with a specialty in hydrological engineering. He was qualified as an expert in a number of areas including: hydrological and hydrotechnical engineering, stream channel geomorphology, open channel water surface profile modelling, hydraulic modeling design, field review of clear span bridges and stream channel restoration works for steep mountain creeks, and the standard of care of consulting engineers in British Columbia.

[104] From 1982-1988 he was employed by the Ministry of Environment and was an engineer appointed under the *Water Act* performing hydrological engineering and supervision of river restoration projects. He is now a consulting engineer specializing in flood prevention design, flood restoration and remediation projects for rivers and creeks.

[105] He testified that customary professional engineering standards treat public safety as a top priority and thus cutting corners is not acceptable.

[106] Briefly, Mr. LaCas' opinions were that:

- a) Channel restoration/bridge design are the purview of hydrological and/or hydrotechnical professional engineers;
- b) A professional engineer responsible for designing a bridge such as the McLaughlin Bridge would take into account the land on both sides and look for solutions that would not endanger habitable areas;
- c) Had a qualified professional engineer designed the McLaughlin Bridge Replacement, it would have been built an additional 1.4 metres higher than it was (and two metres higher than the original bridge height);

- d) Ideally a backup bypass channel should have been constructed so that flood waters could be diverted into Mara Lake in the event the McLaughlin Bridge was blocked; and
- e) Had the McLaughlin Bridge been constructed two metres higher, it is unlikely the 2012 Flood would have caused such significant damage to the Vinco Property.

[107] From an engineering perspective, he stated that the goal of creek restoration after a flood is to increase the capacity of the channel for future flows. This is usually done by reinforcing its banks and removing aggradated sediment. In this case, widening the creek would not have been possible because it would have encroached on private property. Thus, it was even more important in this case that proper engineering measures respecting the Works be followed.

[108] In his opinion, Condition 'C' in the McLaughlin Bridge Approval requiring Works to be designed by a "qualified professional engineer" meant that an engineer with qualifications related to the *issue at hand* (namely reinstalling a bridge over a creek prone to debris floods) needed to be retained. This meant that Mr. McLaughlin needed to involve a hydrotechnical engineer – not a structural engineer. In his opinion, any engineer qualified in hydrology who visited the site would have recognized it was on an alluvial fan and posed serious problems. That engineer would have recognized that rebuilding the bridge 0.6 metres higher was insufficient and that the height should have been raised, at a minimum, a further 1.4 metres.

[109] Mr. LaCas' opinions were based on hydraulic modelling that simulated flows in Sicamous Creek at the peak of the flood. The modelling he used included photographic evidence of the 2012 Flood as data input. This became an area of criticism from defence experts because it was their view that his modelling did not take into account any sedimentation that may have occurred *before* the flood peaked. Mr. LaCas disagreed. Similar to Dr. Church, Mr. LaCas' opinion was that, during its peak, the flow of Sicamous Creek had more than enough power to prevent any sedimentation in the channel.

[110] Mr. LaCas also disagreed with the defence suggestion that the standing high lake water would have acted as a brake, slowing down the flow and causing aggradation to occur upstream (known as the “backwater effect”). In his view, because the flow was “supercritical”, the high momentum and velocity of the jetted flow would have flushed everything into Mara Lake and there would have been no backwater effect but for the Blockage.

iii. Dr. Russell Smith

[111] Dr. Smith is a hydrologist and professional engineer. He was qualified as an expert in the following areas: snowpack and runoff hydrological modeling in mountainous catchments areas (particularly in the interior of British Columbia), flood frequency analysis, and field monitoring of hydrological, hydrometric and meteorological processes.

[112] He was asked by the plaintiffs to determine, to the best of his knowledge, what happened during the 2012 Flood in terms of timing and volume of the water flow in Sicamous Creek. Specifically, he was asked to:

- a) Prepare a clear water hydrograph from 12:00 pm on June 23, 2012 to 12:00 am on June 25, 2012;
- b) Prepare a long-term hydrograph covering 1997 through 2017; and
- c) Calculate the time period for the 2012 Flood based on the annual maximum flows produced by the long-term hydrograph.

[113] Using modelling software known as “Raven”, Dr. Smith attempted to simulate what happened during the 2012 Flood to, in effect, duplicate the event (using his own data collected in 2017 from the field as well as data available to him through other sources). In crafting the model, he relied on the science of hydrology along with his own experience, knowledge and education.

[114] Even though his models did not consider input channel roughness, channel geometry, channel slope, water slope or any backwater effect, Dr. Smith was

confident that his models produced a rough approximation of flow volume and timing during the 2012 Flood.

[115] He prepared two reports. The first is dated November 30, 2017. On the eve of submitting it, he realized there was a one-hour time lag in his modelling because he did not account for daylight savings time. That was corrected resulting in his second report dated January 5, 2018.

[116] He was subjected to a lengthy, intense and skillful cross-examination by Mr. Weintraub. Dr. Smith defended his opinion in a passionate and persuasive manner. He acknowledged the frailties of modelling in general and conceded that no model is perfect. As he stated: “all models are wrong, but some are useful”. No model can perfectly represent or recreate the environment, but through careful analysis and exercising sound judgment during parameterization, models can be valuable tools for understanding hydrological events.

[117] Dr. Smith’s modelling results were adopted by Dr. Church and Mr. LaCas as bases for their opinions. In other words, they relied on Dr. Smith’s hydrographs and extrapolated their opinions from them.

b. Defendants’ Experts

[118] The defendants jointly called two liability experts, Dr. Matthias Jakob and Dr. Younes Alila. Each were qualified in their respective fields.

i. Dr. Matthias Jakob

[119] Dr. Jakob was qualified as an expert in hydro-geomorphic processes, debris flood hazard/risk assessment, watershed and hillslope geomorphology, fluvial and mass movement sedimentology, alluvial fan evolution, and hydrology and hydraulic modelling.

[120] The focus of Dr. Jakob’s work is assessing steep creek hazards and risks. This requires extensive knowledge of fluvial sedimentology and alluvial fan evolution. He has studied these issues in depth.

[121] He was asked to critique the expert reports and testimony of Dr. Church and Mr. LaCas. Interestingly, Dr. Jakob and Dr. Church are colleagues and have collaborated on and published a number of peer-reviewed articles together. Dr. Jakob acknowledged that Dr. Church is highly qualified in fluvial geomorphology. He agreed with Dr. Church's competence calculations and analysis.

[122] Dr. Jakob did, however, take issue with two aspects of Dr. Church's evidence. His first point of contention is that Dr. Church relied on Mr. LaCas' cross-sections, which Dr. Jakob believed were unreliable. Among other criticisms, he pointed out that Mr. LaCas did not consider the possibility of aggradation in the channel before peak flow whereas Dr. Jakob believed that pre-peak flow aggradation must have occurred.

[123] Another point of contention was Dr. Church's opinion that prior to the Blockage, the flow was flushing all sediment into deep water and no aggradation was occurring in the channel. To the contrary, Dr. Jakob believed that aggradation was occurring prior to the Blockage, in turn causing a strong backwater effect from the lake upstream to the McLaughlin Bridge. As more material was transported by the ever-increasing flow, more material was introduced into the channel, thus adding to the channel backfilling. He believes that the channel would have been infilled with rock, sediment and other material by natural processes completely independent of the Blockage.

[124] While not ruling out Dr. Church's theory (that sediment, rock and other debris were propelled over the McLaughlin Bridge thus explaining the sizable amount of material that ended up downstream of the bridge), Dr. Jakob preferred his own theory that a majority of the sedimentation downstream of the McLaughlin Bridge occurred before the Blockage.

[125] It was his belief that the process of progressive erosion widened the channel upstream of the Highway 97A Bridge. As the channel widened, the flow changed from a deep, fast flow to a shallower, slower flow. According to Dr. Jakob, this caused infilling of the channel through aggradation. At the same time, the velocity of

the flow was constricted by channel narrowing at the Highway 97A Bridge, which further contributed to the channel infilling process. To illustrate his point, he used the analogy of four lanes of vehicles merging into one: the velocity of the vehicles must slow down in order to merge. Similarly, the velocity of the stream must slow down as it reaches the opening under the Highway 97A Bridge – as it does, it can no longer carry heavier rocks and sediment which drop to the creek bed causing it to infill.

[126] As these two processes occurred, the sediment pushed the creek onto the north side causing it to erode and overflow ultimately creating Avulsion 'D'.

[127] Although he agreed it was theoretically possible, Dr. Jakob rejected Dr. Church's hypothesis that a 390 metre long sediment wedge was formed in the channel upstream of the McLaughlin Bridge following the Blockage that caused Avulsion 'D'. At best, he believes that such a sediment wedge might have reached the Highway 97A Bridge.

[128] Dr. Jakob also disagreed with Dr. Smith's calculations, largely due to the different methodology and parameters used by Dr. Smith. Dr. Jakob used a "field approach" whereas Dr. Smith used a "rainfall runoff" approach. In the result, Dr. Jakob's flow calculations were substantially higher than those determined by Dr. Smith. Dr. Smith's calculations were relied upon by Mr. LaCas in his analysis and then further relied upon by Dr. Church who used Mr. LaCas' results to form his opinions. Dr. Jakob's point is that because Dr. Smith's calculations were flawed, the reports and opinions that relied on those calculations are also flawed.

[129] In sum, Dr. Jakob's opinion is that the damage suffered to the Vinco Property was inevitable given the magnitude of the debris flood. He believes that Avulsion 'D' is unrelated to the McLaughlin Bridge and Channel Restoration. Additionally, because Mara Lake was so high at the time, he believes Avulsion 'A' would have occurred even in the absence of the McLaughlin Bridge. He agreed, however, that some of the flooding caused by Avulsion 'A' was probably enhanced by the Blockage.

ii. Dr. Younes Alila

[130] Dr. Alila is a professional engineer and professor of hydrology at the Faculty of Forestry at the University of British Columbia. He was qualified as an expert in event-based and long-term hydrological modelling. Dr. Alila was retained to review and critique the reports of Dr. Smith and Mr. LaCas.

[131] While he has no personal experience with the specific modelling program used by Mr. LaCas, he has vast experience in modelling generally. He had no quarrel with Dr. Church's report and generally did not comment on it (his one area of disagreement was that Dr. Church relied on the peak flow analyses provided by Mr. LaCas and Dr. Smith). He agreed that Dr. Church's opinion was outside his area of expertise.

[132] Dr. Alila visited the lower fan of Sicamous Creek in April 2016, spending a number of hours touring the delta. He did not go into the watershed. He did not take any measurements nor did he record any observations such as tree height, species, slope gradients, slope aspects, or soil – all of which he agreed have features important to understanding the watershed processes.

[133] Nonetheless, he was critical of Dr. Smith's predictions largely because, in his view, Dr. Smith's modelling was highly dependant on unreliable and suspect inputs and calibrations. Consequently, Dr. Alila's opinion was that Dr. Smith's predicted flows for the 2012 Flood were invalid. He stated:

In summary, the overall integrity of the entire modeling exercise conducted by [Dr. Smith] is highly questionable, as it suffers from the [garbage in, garbage out] syndrome as '*nonsense input data produces nonsense output or garbage ...*' that leads to '*arguments [that] are unsound if their premises are flawed*'.

[Emphasis added.]

[134] In his opinion, it was impossible to determine whether the creek's discharge (as seen from the photographs) would be higher or lower than Dr. Smith's models without further reference to detailed hydraulic modeling of the entire reach of Sicamous Creek.

[135] The seven points of disagreement Dr. Alila had with Dr. Smith's opinion can be summarized as follows:

- a) Dr. Smith made errors in the coding of radar precipitation that resulted in major amplifications on the predictions of the 1997 and 2012 flood flows. As a result, the Raven model predictions were inflated by over 76% and are therefore unreliable.
- b) Dr. Smith used measured flows in 2017 to calibrate the Raven model. By exaggerating the amount of rain over the Sicamous watershed using radar, the entire calibration process was compromised.
- c) The Raven model suffers from "overfitting"/"over-parameterizations". Put another way, the greater the number of parameters being used, the greater the chance for inaccuracy. Dr. Smith compared field measurements in 2017 with Raven predictions using various calibrations and he picked the one he thought was the best fit. Using this method, there is no assurance that the predictions are real or accurate.
- d) Dr. Smith did not validate the Raven model by using the accepted "split-sample experiment" which he says is crucial to building confidence in model.
- e) Dr. Smith used the Raven model to simulate 2017 flows and compared them to his observed field measurements. When the two were close, he decided the Raven parameters would be used for his other predictions. According to Dr. Alila, this method is only valid for predicting low and moderate flows, not peak flows. In Dr. Alila's view, it was improper to extrapolate the model to predict peak flows the way that Dr. Smith did.
- f) Dr. Smith determined that the best fit for the 2012 Flood corresponded to the Radar Medium scenario using the process of elimination. He incorrectly eliminated Radar High, Radar Low and two other scenarios on the basis of his professional judgment, however there were too many unknown and uncertain variables in the process for him to have validly selected Radar Medium to the exclusion of others. The range of rain provided by Environment Canada through radar is not meant to be interpreted as a probability precipitation.

[136] Dr. Alila similarly had misgivings regarding Mr. LaCas' opinions. There are essentially two areas of disagreement Dr. Alila has with Mr. LaCas' opinion: (1) how he coded the geometry of the Sicamous Creek channel, and (2) his selection of what is known as the "Manning n coefficient" relating to channel roughness. Getting both of these criteria correct, he says, is critical to a model's reliability.

[137] He criticized Mr. LaCas for an alleged lack of transparency in his calculations. According to Dr. Alila, the calculations lacked detail and left him guessing as to how he arrived at some of his conclusions. Further, he was critical of Mr. LaCas for making professional “judgment calls” in parameterizing his model. Further, Mr. LaCas had not performed a “sensitivity analysis”, which Dr. Alila believed was necessary. As he put it, “the devil is in the detail” and the detail was not put into the models.

[138] My impression of Dr. Alila’s critique was that he expecting scientific certainty. Therefore, because Dr. Smith and Mr. LaCas exercised a certain degree of discretion, their opinions were not valid. As explained later in these reasons, however, scientific certainty is not the goal in these types of models. Rather, models are prediction tools. Scientific certainty is also not the standard of proof required to decide the issues in this case.

VII. THE PARTIES POSITIONS

a. Plaintiffs’ Position

[139] The plaintiffs summarize their claim as follows:

- a) To the defendants’ knowledge, the channel opening under the McLaughlin Bridge was woefully inadequate. Had it been properly designed by a qualified professional engineer, the Blockage would not have occurred and the damage caused by the 2012 Flood would have been minimal and/or non-existent;
- b) When the McLaughlin Bridge was reinstalled, all three defendants exercised control over its height but nobody took responsibility for its proper design. Instead, they turned a blind eye to the issues involving the McLaughlin Bridge’s height;
- c) The McLaughlin Bridge Replacement and the Channel Restoration were complex, risky activities that should have been carried out with design and construction oversight from a qualified professional engineer. Failure to

engage a qualified professional engineer resulted in a channel that was materially smaller (both in terms of depth and width) than the pre-1997 Flood channel and in an inadequate opening under the McLaughlin Bridge;

- d) The defendants all knew, or ought to have known, that their failure to engage a qualified professional engineer in the design of the Works would likely result in severe flooding and damage to the Vinco Property;
- e) As members of a reasonably foreseeable class of persons that could be affected by future flooding, the defendants owed the plaintiffs a duty of care to ensure the Works were properly designed;
- f) Specifically, the Province in turning a blind eye to the fact that the Works would be completed without satisfying the mandatory Approval conditions acted in bad faith and therefore cannot hide behind the *Water Act's* privative clause;
- g) The Channel Restoration and the McLaughlin Bridge Replacement were not performed in accordance with the strict conditions set out in the Approvals and improper shortcuts were taken. Therefore, the provisions of s. 21 of the *Water Act* make the McLaughlins and the District strictly liable to the plaintiffs for the 2012 Flood damage; and
- h) The 2012 Flood was not an overwhelming flood. Thus, but for the failure of the District, the McLaughlins, and the Province to ensure the Works were properly designed and constructed, the 2012 Flood would have passed with, at worst, only minor damage to the Vinco Property.

[140] The plaintiffs make these key points in support of their claims:

- a) Following the completion of the Works, the Sicamous Creek channel at the McLaughlin Bridge was shallower and narrower than it was before the

1997 Flood. In other words, the McLaughlin Bridge was reinstalled closer to the bed of Sicamous Creek than it had been prior;

- b) Had the District not crowded the channel with round riprap, it would have been wider. Further, had the District dredged the creek closer to its original elevation, it would have been deeper and the Truck would have passed and the Blockage would not have occurred. Following the Channel Restoration, the channel was, in the words of Mr. Doyle, "way too constricted, way too narrow";
- c) Before the Truck arrived, the 2012 Flood had effectively reached its peak and was fully contained within the Sicamous Creek channel;
- d) The plaintiffs' experts should be preferred because they were better qualified and more engaged than the defendants' experts with the evidence of what happened during the 2012 Flood; and
- e) The eyewitness, video and photographic evidence supports the plaintiffs' theory of causation.

[141] The plaintiffs further submit that causation of the damage to the Vinco Property is established with respect to the Works for the following reasons:

- a) The reconstructed banks and bed of the Sicamous Creek were not hydraulically stable or adequately protected from erosion. As predicted by Mr. Doyle, this caused the bed and banks to be mobilized by the flood waters thus exacerbating the Blockage and, in turn, the subsequent infilling of the channel;
- b) The Blockage was the cause of the overbank flow that rapidly eroded the north bank and significantly exacerbated Avulsion 'A'; and
- c) Avulsion 'D' was a direct result of the upstream channel infilling caused by the Blockage.

[142] Waterway says all three defendants are to be blamed for this.

b. The Defendants' Positions Generally

[143] The defendants say that the 2012 Flood was so massive that it would have overwhelmed the channel in any event of the defendants' alleged negligence. They say that the backwater effect caused by the high level of Mara Lake resulted in substantial aggradation upstream to the point that the channel would have been almost fully infilled and flooding of the Vinco Property would have occurred regardless of the Blockage.

[144] The defendants all say that even if Avulsion 'A' can be attributed to the Blockage, by far the most severe damage caused to the Vinco Property was due to Avulsion 'D' which was completely unrelated to Blockage and caused by naturally occurring phenomenon. They argue that Sicamous Creek was almost fully infilled right up to the McLaughlin Bridge before the Blockage occurred and thus, there was no room in the channel for the substantial flow of the creek in any event. They say that debris and the Truck may have exacerbated the Blockage but did not cause Avulsion 'A'.

i. Province's Position

[145] The Province does not dispute that Waterway suffered damages from the 2012 Flood. It does dispute, however, that it owed a duty of care to any of the plaintiffs or that the plaintiffs can maintain a successful claim in negligence or nuisance against it. At all times, the Province maintains that it acted well within its statutory responsibilities and authority under the *Water Act* and PEP.

[146] The Province says that the Sicamous Creek is an active alluvial fan and as such, the risks of such a flood were inherent to anyone owning property or locating a business in that area. The plaintiffs knew of and voluntarily assumed that risk when they relocated Waterway to the Vinco Property. Indeed, as a result of commissioning the EBA Reports in 2007, Vinco and Waterway knew there was a moderate to high risk of a debris flood occurring.

[147] Waterway complains that the Province's actions in allowing the McLaughlin Bridge Replacement and the Channel Restoration stepped outside the four corners of its statutory responsibilities under the *Water Act* and the *Emergency Program Act*. The Province says, to the contrary, that its actions in 1997 and 1998 were part of a legitimate response to an emergency situation impacting local properties and infrastructure. This, the Province submits, was well within its mandate and consistent with its responsibilities.

[148] The Province says that the plaintiffs are attempting to assert a positive duty on the Province to assume responsibility for the design of the Works. This, the Province says, cannot be sustained because its function was merely as a public regulator and benefit provider – not as a party close enough in proximity to create a private law duty of care.

[149] Further, the Province submits that this Court should not second-guess Mr. Doyle's judgment who at all times was acting in a quasi-judicial decision-making function as a regulator. Given the unique, institutional role of approving officers under the *Water Act* and the broad discretion they are afforded, the Province submits that it would be wrong for this Court to adopt the standards as suggested by the plaintiffs.

[150] The Province is not an insurer for damages caused by floods. It provides some financial assistance to qualifying businesses and persons under the PEP, but the scope of that funding is limited to prescribed eligible expenses. Generally, financial assistance is available to restore property to its pre-flood condition. It does not fund enhancements or new flood protection infrastructure.

[151] Even if a duty of care is found, the Province submits that the standard of care cannot, as the plaintiff suggests, be a "best practises of a consulting qualified professional engineer" standard.

[152] Even further, the Province says that the plaintiffs have failed to prove causation on a "but for" standard. The Province says that the consensus between

the experts is that even without the presence of the McLaughlin Bridge, the Vinco Property would have been heavily impacted by the 2012 Flood.

[153] The Province relies on the defence experts who say:

- a) That the high water level of Mara Lake created the backwater effect that extended to the McLaughlin Bridge causing sediment to be deposited in the channel to the point that the flow exceeded the channel capacity and overflowed its banks; and
- b) That the avulsions were unrelated to the Blockage, each occurring as the result of local sedimentation in the channel bed and/or flow blockage/constriction at the Highway 97A Bridge.

[154] The hypothetical “non-negligent” conduct suggested by the plaintiffs would have required the Province to:

- a) Have pre-1997 Flood cross-sections of Sicamous Creek prepared prior to the Channel Restoration;
- b) Insist that the District approve the reconstruction of the McLaughlin Bridge; and
- c) Require Mr. McLaughlin to have the bridge designed by a qualified professional engineer.

[155] The Province says that there simply has been no causal link between these requirements and the plaintiffs’ losses.

[156] Alternatively, if causation is found, damages to be assessed against the Province should be nominal. The Province relies on Dr. Jakob's theory of the event that the Vinco Property would have suffered damage regardless.

[157] Finally, the Province submits that the losses claimed for pure economic losses by the Individual Houseboat Owners are not recoverable as a matter of law.

Further, their claim for relational economic loss also fails because they do not fall within one of the exceptions to the general rule that pure economic loss is not recoverable: *Martel Building Ltd. v. Canada*, 2000 SCC 60 at paras. 36-38.

ii. The District's Position

[158] The District adopts the Province's submissions on causation.

[159] The District says that Mr. Doyle's balancing of the various competing interests was a proper exercise of his discretion and his mode of proceeding cannot be challenged by the plaintiffs. That balancing is distilled in the Approvals and is protected by the *Water Act's* s. 49 privative clause.

[160] Further, the evidence shows that whatever the District was obliged to do under the Channel Restoration Approval, it did within its four corners of its statutory and legal duties and within the physical and economic constraints it faced. For the District to have done more would have amounted to a breach of the Approval conditions and a possible actionable trespass on the land of the Province and the land of the private owners. Given the physical constraints, the channel could not realistically have been dredged any deeper or made any wider than the Approval permitted. The fact of the matter was that the channel was "way too constricted, way too narrow". There was nothing other than a full scale reconstruction of Sicamous Creek that could have solved the problem. Such a construction was well beyond the District's mandate and ability to fund.

[161] Initially, Mr. Doyle requested cross-sections from the District. The District concedes they were not forthcoming. Though the plaintiffs say that the District should be faulted for this, the District argues that the pre-1997 Flood Sicamous Creek cross-sections were not known with precision and would have been approximated in any event. When Mr. Doyle attended the February 28, 1998 site meeting, he was apparently content to rely on the rudimentary Harding Sketches. Mr. Doyle could have insisted on the cross-sections but exercised his discretion not to. In any event, s. 9 of the *Water Act* refers to "conditions in writing". There was no

condition that cross-sections be provided. The Approval gave no dimensions and only stated that the channel could not be dredged more than one metre.

[162] Further, it is not reasonable to expect an approval holder to guess what conditions in an approval mean. Section 41 of the *Water Act* imposes stiff civil and criminal sanctions for breaching an order or condition and it would be grossly unfair to imply conditions that were not explicitly set in writing. In situations where there are penal consequences, the orders and conditions must be construed narrowly. Conditions cannot be added by implication: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42.

[163] On their face, the Approvals were ambiguous in terms of what the District and the McLaughlins were required to do in the circumstances. The *contra proferentem* rule requires that any ambiguities be construed in favor of the District and the McLaughlins.

[164] The District asserts that it was merely an Approval holder and reminds the Court that it was not an owner of Sicamous Creek or of the land on either side of the McLaughlin Bridge. Without the issuance of the Approval, the District had no obligation to be involved in the post-1997 Flood remediation efforts. Therefore, its obligations are confined to the terms and conditions of the Approval.

[165] It argues that to make the creek deeper and wider would have required professional engineering. This would have, in effect, meant that the District would have had to question the wisdom of the orders issued by Mr. Doyle and the conditions he deemed advisable. They were not required to do so. Section 21 requires only that they take reasonable care in the works performed in accordance with the Approval.

[166] The District summed up the plaintiffs' case this way:

...The extra work sought by the plaintiffs is inconsistent with the Province's mandate. There is no ability for this court to conclude this extra work would ever have been approved under the Water Act and therefore could not be completed without committing an offence under the Water Act...

In truth, this is the heart of the plaintiffs' claim. Their complaint traces back to this very beginning; The Province, with knowledge of the risk to the Vinco property, simply should have expanded its mandate and the available financial resources. Without an expansion of that mandate, none of the work the plaintiffs say should have been performed could have been.

[167] Finally, the District agrees with the Province that the Individual Houseboat Owners have no ability to claim in public or private nuisance because they are not landowners and have no legal interest in the Vinco Property.

iii. The McLaughlins' Position

[168] The McLaughlins also adopt the Province's submissions on causation.

[169] They say that the bridge height was a matter negotiated between the Province and the District to their exclusion. They submit that they simply performed the requirements imposed on them as they understood them and that their conduct was reasonable throughout. They argue that:

- a) The plaintiffs have failed to prove that "but for" the McLaughlin Bridge, their damage would not have happened;
- b) Section 21 of the *Water Act* must be read conjunctively and therefore, the McLaughlins are only responsible for damage if they are found not to have exercised reasonable care;
- c) In any event of s. 21, they cannot be held liable because the defence of statutory authority protects them from strict liability. This defence is based on the fact that the bridge re-installation was authorized because there was no other practical alternative to provide them with access to their property;
- d) Principles surrounding public welfare offences and punishment ought not to be inflicted on those who act reasonably and are without fault;

- e) The plaintiffs failed to act reasonably by relocating their business to the Vinco Property in the face of significant and known risks. If any liability is found, Vinco and Waterway should be found contributorily negligent; and
- f) Save for Vinco and Waterway, the plaintiffs have no standing to sue for pure economic loss.

[170] The McLaughlins contend that in any event of my interpretation of s. 21 of the *Water Act*, their actions were reasonable and they are entitled to the defence of due diligence. They argue that even if the *Water Act* imposes strict liability, it should be treated as a public welfare offence of a civil nature and punishment should not be inflicted on them: *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299.

VIII. DISCUSSION

[171] The *Water Act* is at the forefront of this case. It is a statute that has been on the books since at least the early 1900s and has evolved over time.

[172] In simple terms, it vests ownership of all provincial waters (including streams, rivers and creeks) in the Province and provides that any construction completed in or around provincial waterways must be approved by the Province and completed in accordance with any conditions or terms set by the Province. Failure to perform work on those conditions can attract liability for any damage caused by works completed.

[173] The relevant definitions of the *Water Act* as it existed in 1997 and 1998 are:

“approval” means an approval of the ...engineer under section...9;

“changes in and about a stream” means

(a) any modification to the nature of a stream...or flow of water within a stream, or

(b) any activity or construction within the stream channel that has or may have an impact on a stream;

“engineer” means a professional engineer employed by the government and designated in writing by the comptroller as an engineer and includes a regional water manager;

“owner” means a person entitled to possession of any land...and includes a person who has a substantial interest in the land...;

"stream channel" means the bed of a stream and the banks of a stream, whether above or below the natural boundary and whether usually containing water or not, including all side channels;

"works" means

...

(c) obstructions placed in or removed from streams banks or beds of streams, and

(d) changes in and about a stream.

[174] The relevant sections of the *Water Act* as it existed in 1997 and 1998 are:

2(1) The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government.

...

9(1) ...an engineer may grant an approval in writing authorizing on the conditions he or she considers advisable

(a) a person to make changes in and about a stream . . .

(2) A ... person ... may only make changes in and about a stream in accordance with an approval under this section. . . .

...

18(4) ...an engineer may amend an approval granted under section 9, on the conditions he or she considers advisable.

...

21(1) A licensee, holder of an approval or person who makes a change in and about a stream in accordance with the regulations must

(a) exercise reasonable care to avoid damaging land, works, trees or other property, and

(b) make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works.

...

39(1) In addition to all other powers given under this Act... an engineer may do one or more of the following:

...

(d) order the repair, alteration, improvement, removal of or addition to any works:

(e) order the restoration or remediation of any changes in and about a stream; . . .

(2) An order under subsection (1) may be made subject to any conditions the engineer considers advisable.

...

48 An action may not be brought against ... a[n] engineer ...for anything done or left undone by that person in good faith in the performance or intended performance of an authority conferred or duty imposed under this Act or the regulations.

49 ... a[n] ... order of ... [an] engineer must not be questioned, reviewed or restrained by ... a proceeding ... in any court ...

[175] For the purposes of this case, ss. 9 and 21 of the *Water Act* are especially relevant. Section 9 authorizes the Province's engineer to approve works in or around a stream on conditions he or she *considers advisable*. Section 21 imposes liability on a holder of an approval issued under s. 9 to make *full compensation* to owners (as defined in the *Water Act*) for damage caused by works.

[176] It is on the backdrop of these two sections that the plaintiffs claim full compensation for the damage caused by the 2012 Flood.

[177] The photographic and video evidence along with the oral testimony I have heard leaves no doubt that the term "catastrophic" is an apt description of the 2012 Flood. It caused devastating damage not only to the Vinco Property and Waterway business, but to Highway 97A, the Highway 97A Bridge and numerous other properties bordering Sicamous Creek. It was similar in nature but more severe than the 1997 Flood.

[178] Distilled for simplicity, the 1997 Flood was caused by substantial debris piling up against the upstream side of the former McLaughlin Bridge causing water to breach the banks of Sicamous Creek. The flooding was significant enough that a decision was made to remove the former McLaughlin Bridge entirely to allow the debris and flood waters to discharge into Mara Lake.

[179] After the 1997 Flood, Mr. Doyle foresaw the problem with the reinstallation of the McLaughlin Bridge because of its "terrible" location over a creek channel that from a potential flooding perspective was already compromised. As an engineer appointed under the *Water Act*, Mr. Doyle was called upon to use his engineering judgment and consider other relevant factors such as available PEP funding, the

reconstruction of Mervyn Road and the rights of the McLaughlins and the Maurers. Faced with significant physical and economic obstacles, Mr. Doyle actively worked with the stakeholders to come up with a solution.

[180] The plaintiffs' claim is essentially that Mr. Doyle allowed for a minimal "Band-Aid" solution to a larger problem that he knew would arise in the future. By issuing the Approvals against his better judgment, Mr. Doyle breached the duty of care he owed the plaintiffs as future adjacent property and business owners.

[181] The plaintiffs say that Mr. Doyle's decisions respecting the Approvals were not in accordance with what he "*considered advisable*" from an engineering perspective. When the Works were not completed to Mr. Doyle's satisfaction, the plaintiffs submit that he took a hands-off/"not my problem" approach, crossed his fingers and closed the books.

[182] Therefore, as against the Province, at issue is first whether Mr. Doyle's balancing act can be called into question as a *Water Act* engineer charged with exercising his discretion under s. 9. Secondly, whether Mr. Doyle was obliged to take any action after completion of the Channel Restoration and McLaughlin Bridge Replacement when he was dissatisfied with the results. The resolution of these issues requires consideration of whether the Province owed a duty of care to the plaintiffs, and if so, whether that duty was breached.

[183] As against the District and the McLaughlins, at issue is first whether they owed the plaintiffs a duty of care, and if so, whether that duty was breached. Secondly, whether s. 21 of the *Water Act* imposes liability (either in nuisance or as strict liability) upon them for any damage caused by the Channel Restoration and/or the McLaughlin Bridge Replacement.

[184] If liability is found against any of the defendants, the plaintiffs must then prove causation and damages.

IX. OVERVIEW OF LIABILITY

[185] As against the Province, liability in this case can be determined in accordance with the law of negligence. To determine this liability, I must establish what duty, if any, Mr. Doyle (as an engineer appointed under the *Water Act*) owed to the plaintiffs (as future owners and occupiers of the Vinco Property).

[186] As against the McLaughlins and the District, liability can be determined on the basis of s. 21 of the *Water Act* because they were both approval holders under s. 9.

[187] Accordingly, I will focus my analysis on the law of negligence and the *Water Act*. Though not necessary for the disposition of this case, I will nonetheless deal with the issues of nuisance and joint torfeasorship in the event that I am wrong in my findings.

[188] Additionally, the defendants have filed third party notices against each other each seeking contribution and/or indemnity from other defendants in the event that they are found liable. I will deal with these issues later in these reasons.

[189] If liability is found against any of the defendants, they assert that Waterway and Vinco must be found contributorily negligent for relocating their business in an area they knew, or ought to have known, to be prone to debris floods. I will also deal with this issue later on in these reasons.

X. ISSUES

[190] The issues are:

- a) Firstly, whether the Province is liable in negligence. There are some sub-issues under this part:
 - i. Whether the Province owed the plaintiffs a duty of care. This will include foreseeability and proximity analyses.
 - ii. If there is a duty of care, whether the Province breached the standard of care;

- b) Secondly, whether the McLaughlins and/or the District are liable under s. 21 of the *Water Act*;
- c) Thirdly, whether the plaintiffs have a claim in either public or private nuisance;
- d) Fourthly, whether the plaintiffs have proven causation; and
- e) Finally, the measure of damages if applicable.

XI. LIABILITY IN NEGLIGENCE

[191] Conduct is negligent if it creates an unreasonable risk of harm. In measuring whether the risk of harm is an unreasonable one, the Court must balance the danger created by the defendant's conduct on the one hand and the utility of that conduct on the other. If the hazard outweighs the social value of the activity, liability is imposed; if it does not, the defendant is exonerated.

[192] In assessing the risk, the Court looks at two components: (1) the chance or likelihood that the harm will culminate, and (2) the gravity or severity of the potential harm that will ensue if the risk unfolds: A. Linden, B. Feldthusen et al., *Canadian Tort Law*, 11th ed. (Toronto: LexisNexis, 2018) at 159.

[193] It is well settled that proof of a claim in negligence requires the plaintiff to demonstrate that:

- a) The defendant owed the plaintiff a duty of care;
- b) The defendant's behaviour breached the requisite standard of care;
- c) The plaintiff suffered damage; and
- d) The damage was caused, in fact and in law, by the defendant's breach.

Mustapha v. Culligan of Canada Ltd., 2008 SCC 27 at para. 3 [*Mustapha*]; *Childs v. Desormeaux*, 2006 SCC 18 at para. 13 [*Childs*]; *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 at para. 77 [*Deloitte*].

a. Duty of Care

[194] The test to establish a duty of care was summarized by the Court of Appeal in *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163 [Carhoun] at para. 50 as follows:

[50] The test for determining the existence of a private duty of care owed by a public authority is known as the “*Anns/Cooper*” test: *Cooper v. Hobart*, 2001 SCC 79. The test requires a court to address the analysis by considering the following series of questions:

- 1) Does a sufficiently analogous precedent exist that definitively found the existence or non-existence of a duty of care in these circumstances;
If not;
- 2) Was the harm suffered by the plaintiff reasonably foreseeable;
If yes;
- 3) Was there a relationship of sufficient proximity between the plaintiff and the defendant such that it would be just to impose a duty of care in these circumstances;
If yes, a *prima facie* duty arises;
- 4) Are there any residual policy reasons for negating the *prima facie* duty of care established in question/step 3, aside from any policy considerations that arise naturally out of a consideration of proximity.
If not, then a novel duty of care is found to exist.

i. Is There a Significantly Analogous Precedent?

[195] All parties agree that the plaintiffs’ allegations do not fall within a settled category that the courts have recognized as giving rise to a duty of care. Accordingly, a full *Anns/Cooper* duty of care analysis is required: *Deloitte; Rankin (Rankin’s Garage & Sales) v. J.J.*, 2018 SCC 19 [Rankin].

ii. Was the Harm Suffered by the Plaintiffs Reasonably Foreseeable?

[196] Here, the question is whether it was reasonably foreseeable that the undersized channel opening (caused by a combination of the Channel Restoration and the McLaughlin Bridge Replacement) would result in the Blockage and ensuing flood.

[197] The defendants concede that flooding to the Vinco Property was generally within Mr. Doyle's contemplation when he issued the Approvals. After the 1997 Flood, Mr. Doyle had direct knowledge of the damage that a blockage of the McLaughlin Bridge could cause. He knew the McLaughlin Bridge was a problem and that if the channel opening was not large enough, the problem would be repeated.

[198] Therefore, the flooding was reasonably foreseeable. Mr. Doyle recognized that Sicamous Creek was a dormant volcano and that it was a matter of when, not if, it was going to erupt. He foresaw the risk that the Works could, and likely would, result in a blockage of the McLaughlin Bridge causing Sicamous Creek to overflow its banks.

[199] The Province denies, however, that Mr. Doyle ought to have realized that the District and the McLaughlins were relying on him as a bridge design engineer as opposed to just a regulator. Citing *Deloitte*, the Province argues that the reasonable foreseeability of the McLaughlins' and District's reliance on Mr. Doyle must be determined by the relationship of proximity between the parties and the scope of the Province's undertaking. At para. 35 of *Deloitte*, the Supreme Court of Canada stated:

[35] As a matter of first principles, it must be borne in mind that an injury to the plaintiff in this sort of case flows from the fact that he or she detrimentally relied on the defendant's undertaking, whether it take the form of a representation or the performance of a service. It follows that an injury to the plaintiff will be reasonably foreseeable if (1) the defendant should have reasonably foreseen that the plaintiff would rely on his or her representation; and (2) such reliance would, in the particular circumstances of the case, be reasonable (*Hercules*, at para. 27). *Both the reasonableness and the reasonable foreseeability of the plaintiff's reliance will be determined by the relationship of proximity between the parties; a plaintiff has a right to rely on a defendant to act with reasonable care for the particular purpose of the defendant's undertaking, and his or her reliance on the defendant for that purpose is therefore both reasonable and reasonably foreseeable. But a plaintiff has no right to rely on a defendant for any other purpose, because such reliance would fall outside the scope of the defendant's undertaking. As such, any consequent injury could not have been reasonably foreseeable.*

[Emphasis added.]

[200] I conclude that Mr. Doyle's capitulation on the bridge height being "at least 0.6 metres higher" demonstrates that he knew or ought to have known that the District (and through the District, the McLaughlins) would accept that height as design advice.

[201] I also conclude that the Province and District expected that the McLaughlins would rely on Mr. Doyle's expertise with respect to the bridge height.

Mr. McLaughlin's evidence, which I accept on the point, was that the bridge height issue was a debate that the District and Province were engaged in to his exclusion. He simply wanted his bridge replaced, the details of which were being worked out by others.

[202] While I agree that it was not reasonably foreseeable that the Truck would fall into Sicamous Creek and cause the Blockage, it was reasonably foreseeable that a blockage of some kind would occur, be it by trees, large rocks, or a combination of other debris. That was the reason behind Mr. Doyle's concern with the McLaughlin Bridge height. Future neighbours in the area should have been in Mr. Doyle's mind when he approved the Works.

iii. Was There a Relationship of Sufficient Proximity?

[203] Foreseeability of harm is not enough to ground a duty of care. The plaintiffs must still establish that there was a sufficiently "close and direct" relationship that makes it "just and fair" to impose a duty of care in law: *Deloitte* at para. 25. These concerns are heightened in claims for economic loss: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 [*Imperial Tobacco*] at para. 42.

[204] The Province argues that, in relation to itself and the plaintiffs, the factors giving rise to proximity, if they exist, must arise from statute. The Province argues that nothing in the *Water Act* or the *Emergency Program Act* evinces any intent to create a private law duty of care. To the contrary, it says, both statutes contain provisions intended to protect engineering decisions from judicial scrutiny. Therefore, if a duty is found to exist in this case, it must be grounded on the Province's officials acting outside the scope of their mandate.

[205] In *The Los Angeles Salad Company Inc. v. Canadian Food Inspection Agency*, 2013 BCCA 34, at para. 40, Mr. Justice K. Smith outlined three circumstances where a relationship of proximity can exist with respect to government actors:

[40] . . . First, the relationship may be created in the statute itself, although the Court cautioned that, since statutes are most often “aimed at public goods”, it may be difficult to infer that the legislature intended to create private law tort duties, especially where such duties would conflict with the duty to the public and where the public duty is overarching. Next proximity may “arise from a series of specific interactions between the government and the claimant” although, even here, a finding of proximity might have to give way for policy reasons if to recognize it would conflict with the statutory duty. Finally, proximity may be found in a combination of statutory duties and interactions between the parties.

[206] In that case, the Court of Appeal was asked to consider whether federal government food inspectors owed a private law duty of care to sellers of food products. The Court concluded that the statement of claim should be struck for not disclosing a reasonable claim. On the issue of proximity, the Court found that while proximity may be created by the regulator’s conduct, it does not typically arise when the regulator is simply discharging its statutory responsibilities in the public interest:

[55] . . . In my view, the clear purpose of the relevant legislative scheme is to protect the health of Canadians by preventing the sale of contaminated food in Canada. To recognize a private law duty of care to food sellers would conflict with that purpose. It would put food inspectors in the untenable position of having to balance the paramount interests of the public with private interests of food sellers and would thereby have a chilling effect on the proper performance of their duties. Thus, the statutory scheme excludes the possibility of sufficient factual proximity to make it just and reasonable to impose a *prima facie* duty of care in the circumstances of this case: see *Imperial Tobacco* (S.C.C.) at para. 47.

[207] Defining the relationship in a proximity analysis may involve looking at expectations, representations, reliances, and the property or other interests involved: *Cooper v. Hobart*, 2001 SCC 79 [Cooper] at paras. 32-34. Essentially, these are factors that allow the evaluation of the closeness of the relationship between the plaintiff and the defendant and inform whether it is just and fair to impose a duty of care in law.

[208] McLachlin J., as she then was, made the following observations while discussing proximity in *Canadian National Railway Co. v. Norsk Pacific Steamship Co.*, [1992] 1 S.C.R. 1021 [*Norsk*] at 1152-1154:

. . . Proximity is the controlling concept which avoids the spectre of unlimited liability. Proximity may be established by a variety of factors, depending on the nature of the case. To date, sufficient proximity has been found in the case of negligent misstatements where there is an undertaking and correlative reliance (*Hedley Byrne*); where there is a duty to warn (*Rivtow*); and where a statute imposes a responsibility on a municipality toward the owners and occupiers of land (*Kamloops*). But the categories are not closed. As more cases are decided, we can expect further definition on what factors give rise to liability for pure economic loss in particular categories of cases. In determining whether liability should be extended to a new situation, courts will have regard to the factors traditionally relevant to proximity such as the relationship between the parties, physical propinquity, assumed or imposed obligations and close causal connection. And they will insist on sufficient special factors to avoid the imposition of indeterminate and unreasonable liability. The result will be a principled, yet flexible, approach to tort liability for pure economic loss. It will allow recovery where recovery is justified, while excluding indeterminate and inappropriate liability, and it will permit the coherent development of the law in accordance with the approach initiated in England by *Hedley Byrne* and followed in Canada in *Rivtow*, *Kamloops* and *Hofstrand*.

I add the following observations on proximity. The absolute exclusionary rule adopted in *Stockton* and affirmed in *Murphy* (subject to *Hedley Byrne*) can itself be seen as an indicator of proximity. Where there is physical injury or damage, one posits proximity on the ground that if one is close enough to someone or something to do physical damage to it, one is close enough to be held legally responsible for the consequences. Physical injury has the advantage of being a clear and simple indicator of proximity. The problem arises when it is taken as the only indicator of proximity. As the cases amply demonstrate, the necessary proximity to found legal liability fairly in tort may well arise in circumstances where there is no physical damage.

Viewed in this way, proximity may be seen as paralleling the requirement in civil law that damages be direct and certain. Proximity, like the requirement of directness, posits a close link between the negligent act and the resultant loss. Distant losses which arise from collateral relationships do not qualify for recovery.

[Emphasis in original.]

[209] The plaintiffs argue that a proximate relationship exists because the property (then the Beachcomber Campground) along with the property owners (the Maurers) were within the defendants' reasonable contemplation at the time of the Works. Further, they submit that it was within the defendants' reasonable contemplation that

the Beachcomber Campground would be sold in the future to a business such as Waterway. They cite several factors in support of this proposition.

[210] Put briefly, those factors relate to: the Vinco Property's physical proximity (including the physical presence of the Province's representatives on the Vinco Property); the *Water Act* legislative scheme that is intended to benefit persons who may be adversely affected by such changes (which in the plaintiffs' submission, creates a discrete class of persons); and specific interactions between the Province, the District, the Maurers and the McLaughlins that created or contributed to foreseeable risks to those with interest in the property.

[211] The defendants counter these submissions. Put briefly, they say that physical proximity does not equate to legal proximity. They say that field investigations are routine and that it is standard practice that Province representatives are physically present onsite. Further, they argue, there is nothing in the *Water Act* that suggests an intention to create a private law remedy against the government. Indeed, the *Water Act* provides an exclusive right of appeal of the regulator's decisions to the Environmental Appeal Board. With respect to the plaintiffs' point about specific interactions, the Province says that the plaintiffs must show that any interactions the Province had with the McLaughlins, the Maurers or the District fell outside its role as regulator in order to establish a duty of care.

[212] The defendants argue that as was the case in *Cooper*, proximity does not arise in this case and that a finding of proximity would set a dangerous precedent.

[213] The plaintiffs say that this case is different than *Cooper*. In *Cooper*, there were no "specific interactions" to ground the duty of care and therefore the only possible source of duty arose from the statute. They point to *Carhoun* and *Imperial Tobacco* as examples where duties of care arose from "specific interactions" between the government and other parties. Although *Carhoun* dealt with "specific interactions" between the government and the claimant, the plaintiffs point out that the interactions need not be with the claimant directly: *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41; *Fullowka v. Pinkerton's of Canada*

Ltd., 2010 SCC 5; *Kamloops (City) v. Nielsen*, [1984] 2 S.C.R. 2 [Kamloops]; *Taylor v. Canada (Attorney General)*, 2012 ONCA 479.

[214] The plaintiffs agree that they were unrelated third parties uninvolved with the Works and therefore did not have “specific interactions” with the Province. They therefore rely on the interactions between the Province, the District, the Maurers and the McLaughlins to ground the duty of care saying that those interactions affected them as future owners/occupiers of the then Beachcomber Campground.

[215] Our Court of Appeal very recently revisited the issue of proximity in *Wu v. Vancouver (City)*, 2019 BCCA 23 [Wu] which was released after the trial in this case but before these reasons were given. The Court discussed the trend in the jurisprudence towards an increasing emphasis on the proximity branch of the duty of care analysis.

[216] At issue in *Wu* was whether proximity existed in a case where the City failed to make a decision on a development permit application within a reasonable time. The consequence of not making the decision was an arguable loss of compensation that was possible under certain bylaws at the time. The Court held that the relationship that existed between the property owners and the City was not sufficiently proximate. At paras. 50 and 52, the Court stated:

[50] The most significant evolution in applying the *Anns/Cooper* framework is the increasing emphasis placed on the analysis of proximity, at the expense of reasonable foreseeability, as the critical element in recognizing a *prima facie* duty of care. In *Cooper*, the Supreme Court of Canada made clear that reasonable foreseeability standing alone is insufficient to ground a *prima facie* duty of care. In addition to reasonable foreseeability, there must be proximity: *Cooper* at para. 42. In *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, the Supreme Court of Canada has recently traced the refinements in the *Anns/Cooper* framework placing greater emphasis on a robust analysis of proximity as the touchstone for recognizing a novel *prima facie* duty of care.

...

[52] The evolution in the *Anns/Cooper* framework is also reflected in cases dealing with the recognition of private law duties owed by public authorities. The historical emphasis on the distinction between operational and policy decisions has been overshadowed by a more rigorous proximity analysis. . . .

[217] At para. 57, the Court noted that:

[57] . . . where a conflict arises between a potential private law duty and the public authority's duty to the public, the private law duty would unlikely be recognized."

[218] Further at para. 58:

[58] . . . as a general proposition subject only to arguably rare exceptions, statutory duties owed by public authorities are insufficient to ground private law duties arising out of interactions *that are inherent* in the exercise of the public law duty. [emphasis added]

[219] Thus, whether proximity exists will depend on how Mr. Doyle's actions are characterized. That is, whether they were inherent in the exercise of his duties as an engineer under the *Water Act*.

[220] The Court in *Wu*, at paras. 59 and 70, looked specifically at the proximity analysis relating to a public body when an individual public official is involved:

[59] Typically, if a private law duty of care is recognized, it will arise from specific interactions either between the public authority and the claimant sufficient to create the necessary proximity or in the context of a statutory scheme: *Imperial Tobacco* at paras. 45-46. An example of such an approach is found in *Fallowka v. Pinkerton's of Canada Ltd.*, 2010 SCC 5, where the Court emphasized the specific features of the relationship between the plaintiffs and the regulator in the circumstances of the case. There, a combination of factors, including the regulatory regime and the interactions and knowledge of regulators, were necessary to ground a finding of proximity. *Vlanich v. Typhair*, 2016 ONCA 517, para. 31, helpfully explains how proximity may arise between a public authority and a member of the public where a public authority assumes responsibility for ensuring compliance with standards.

. . .

[70] Importantly, this does not foreclose the possibility that a relationship of proximity could be created in the context of a scheme, including this one, and specific facts and circumstances arising from interactions between the parties. *There could be a case in which a public official negligently misrepresented certain facts that were relied on by an applicant.* This is not such a case. *Alternatively, a public official could act in such a way so as to assume a responsibility to have regard for the private interests of an applicant who in turn relies upon that assumption of responsibility.* Again, this is not such a case. The representations the judge referred to were, at best, general statements about process. I see nothing in the evidence that would warrant treating them as actionable misrepresentations, and the judge did not do so.

[Emphasis added.]

[221] Dealing with the facts, no one disputes that both the McLaughlin Bridge Replacement and the Channel Restoration, as approved by the Province, are in close *physical* proximity to the Vinco Property. The issue is whether there is *legal* proximity.

[222] The Province argues that s. 21 of the *Water Act* makes it clear that legal responsibility for the Works rests with the McLaughlins and the District. It says that this legal responsibility is not dependent on any measure of physical proximity, just a nexus between the Works and damage to an “owner” as defined by the *Water Act*. The Province argues that it would neither be fair nor reasonable to burden the Province with the responsibility of regulating some parties’ acts while simultaneously protecting other parties’ private, economic interests.

[223] The Province cites *Imperial Metals Corporation v. Knight Piésold Ltd.*, 2018 BCSC 1191 [*Imperial Metals*] for the proposition that the plaintiffs must prove that the interactions between the Province and its co-defendants fell outside the Province’s role as regulator:

[108] As a general rule, provided a regulator deals with a regulated party for the purpose of administering and enforcing the statutory scheme, interactions with the regulated party will not give rise to a relationship of proximity: *Elder Advocates* at para. 72; *Gill* at paras. 32-33; *Los Angeles Salad* at paras. 52-53.

[109] However, during oral argument, the Province accepted that there are exceptions to this general rule. The Province framed the exceptions as follows:

1) Where the regulator steps outside the role of regulator, and assumes the role of designer, developer or advisor to the regulated party: *Imperial Tobacco* at paras. 53-54; *Waterway Houseboats* at paras. 17-18, 55.

2) Where the regulator acquires knowledge of serious and specific risks to the person or property of a clearly defined group of the class that the statutory scheme was intended to protect: *Fullowka* at paras. 54-55; *Taylor v. Canada (Attorney General)*, 2012 ONCA 479 at paras. 109-111.

3) Where the regulator makes a specific misrepresentation to the regulated party – apart from a regulatory statement – that invites reliance, and the regulated party relies on the misrepresentation for the purpose for which it was made: *Imperial Tobacco* at paras. 59-60; *Deloitte & Touche* at paras. 30-31, 34-35.

4) Where interactions between the regulator and the regulated party give rise to a clear set of expectations that the regulator will consider the interests of the regulated party, and the statute does not expressly or implicitly exclude consideration of those interests: *Carhoun* at paras. 97-104; *Wu* at paras. 164-165....

(Collectively, the “Accepted Exceptions”.)

[110] I am in agreement with the Accepted Exceptions, although I do not suggest that these are necessarily the only situations in which proximity may be found against a regulator.

[Emphasis added.]

[224] Category #1 in *Imperial Metals* (as underlined above) is applicable here. As I will expand on later in these reasons, I find that Mr. Doyle stepped “outside the role of the regulator” and assumed the role of designer to a *regulated* party, that being the District and the McLaughlins.

[225] Category #2 is also applicable. I find that Mr. Doyle acquired knowledge of serious and specific risks to the property of a clearly defined group that the *Water Act* was meant to protect (that being the owners and future owners of property in and around works authorized by the *Water Act*).

[226] Category #3 is also applicable. I find, for reasons I will explain, that Mr. Doyle made specific representations to the McLaughlins about the bridge height that invited reliance and that the McLaughlins did, indeed, rely upon the representations (see *Imperial Tobacco* at paras. 59-60; *Deloitte* at paras. 30-31, 34-35).

[227] In order for proximity to exist, a “close causal connection” between the alleged misconduct (Mr. Doyle’s discussions and concessions leading to the Approvals) and the complained of harm (2012 Flood) may be a relevant consideration: *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 55. I find that a close causal connection exists in this case.

[228] By this finding, I do not suggest that the Province’s *Water Act* engineers are required to design works they approve as a matter of course or that the Province will always owe a private law duty of care when it learns of proposed works that may pose a danger to a particular person or property.

[229] Rather, my finding focuses on what the Province should *not* do. As I will discuss in more detail under the standard of care, it firstly should not increase the risk to the plaintiffs through careless communications with those it regulates. Secondly, it should not violate its own statutory scheme in order to approve works on conditions it knows are inadequate.

[230] While it is true that the plaintiffs themselves were not, and could not have been, on the defendants' radar at the time the Works were undertaken (and therefore did not have any more direct a relationship with the defendants than other members of the public), they were future purchasers of the Beachcomber Campground. Therefore, their status as "future neighbours" makes the relationship between the plaintiffs and defendants proximate.

[231] Taking a holistic approach to determining the proximity issue (as opposed to an "all-or-nothing" checkbox approach), I conclude that there was a relationship of sufficient proximity between the plaintiffs and the defendants that grounds a *prima facie* duty of care.

iv. Residual Policy Considerations

[232] Despite the existence of a proximate relationship, defendants are permitted to establish that policy considerations ought to negate a *prima facie* duty of care: *Childs* at para. 13.

[233] Assessing the residual policy stage involves a consideration of factors external to the relationship between the parties, including: (1) whether the law already provides a remedy; (2) whether recognition of the duty of care creates "the spectre of unlimited liability to an unlimited class"; and (3) whether there are "other reasons of broad policy that suggest that the duty of care should not be recognized". It asks whether it would be better, for reasons relating to legal or doctrinal order or arising from other societal concerns, not to recognize a duty of care in a given case: *Deloitte* at para 40.

[234] As further explained by the Supreme Court of Canada in *Cooper* at paras. 37-39:

[37] This brings us to the second stage of the *Anns* test. As the majority of this Court held in *Norsk*, at p. 1155, residual policy considerations fall to be considered here. These are not concerned with the relationship between the parties, but with the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally. Does the law already provide a remedy? Would recognition of the duty of care create the spectre of unlimited liability to an unlimited class? Are there other reasons of broad policy that suggest that the duty of care should not be recognized? Following this approach, this Court declined to find liability in *Hercules Managements, supra*, on the ground that to recognize a duty of care would raise the spectre of liability to an indeterminate class of people.

[38] It is at this second stage of the analysis that the distinction between government policy and execution of policy falls to be considered. It is established that government actors are not liable in negligence for policy decisions, but only operational decisions. The basis of this immunity is that policy is the prerogative of the elected Legislature. It is inappropriate for courts to impose liability for the consequences of a particular policy decision. On the other hand, a government actor may be liable in negligence for the manner in which it executes or carries out the policy. In our view, the exclusion of liability for policy decisions is properly regarded as an application of the second stage of the *Anns* test. The exclusion does not relate to the relationship between the parties. Apart from the legal characterization of the government duty as a matter of policy, plaintiffs can and do recover. The exclusion of liability is better viewed as an immunity imposed because of considerations outside the relationship for policy reasons — more precisely, because it is inappropriate for courts to second-guess elected legislators on policy matters. Similar considerations may arise where the decision in question is quasi-judicial (see *Edwards v. Law Society of Upper Canada*, [2001] 3 S.C.R. 562, 2001 SCC 80).

[39] The second step of *Anns* generally arises only in cases where the duty of care asserted does not fall within a recognized category of recovery. Where it does, we may be satisfied that there are no overriding policy considerations that would negative the duty of care. In this sense, we agree with the Privy Council in *Yuen Kun Yeu* that the second stage of *Anns* will seldom arise and that questions of liability will be determined primarily by reference to established and analogous categories of recovery. However, where a duty of care in a novel situation is alleged, as here, we believe it necessary to consider both steps of the *Anns* test as discussed above. This ensures that before a duty of care is imposed in a new situation, not only are foreseeability and relational proximity present, but there are no broader considerations that would make imposition of a duty of care unwise.

[235] Canadian courts have accepted the contrast first described in *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.) [*Anns*] between public officials'

“policy” decisions, which cannot give rise to tort liability, and their “operational” acts or omissions, which can. In *Holland v. Saskatchewan*, 2008 SCC 42 at para. 14, the Supreme Court of Canada summarized the distinction as follows:

[14] Policy decisions about what acts to perform under a statute do not give rise to liability in negligence. On the other hand, once a decision to act has been made, the government may be liable in negligence for the manner in which it *implements* that decision...

[Emphasis in original.]

[236] In *Just v. British Columbia*, [1989] 2 S.C.R. 1228, the Supreme Court of Canada considered public authority liability and recognized the distinction between “policy” and “operational” decisions, finding that a true policy decision undertaken by a government agency constitutes a valid basis to negate a duty of care. In that case, the majority of the Court commented on what constitutes such a policy decision, stating at 1245:

[I]t should be borne in mind that such decisions are generally made by persons of a high level of authority in the agency, but may also properly be made by persons of a lower level of authority. The characterization of such a decision rests on the nature of the decision and not on the identity of the actors. As a general rule, decisions concerning budgetary allotments for departments or government agencies will be classified as policy decisions.

[237] The Province contends that the prospect of indeterminate liability is a policy factor that negates a duty of care in this case. Such concerns, it says, relate to the virtually unlimited exposure of government to private claims, which may tax public resources and chill government efforts to enforce legitimate public interests. It points to *Ernst v. Alberta (Energy Resources Conservation Board)*, 2014 ABCA 285, aff’d 2017 SCC 1 [*Ernst*] and *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 [*Elder*] in support.

[238] In *Ernst*, the Alberta Court of Appeal observed at para. 18:

[18] Forcing the Board to consider the extent to which it must balance the interests of specific individuals while attempting to regulate in the overall public interest would be unworkable in fact and bad policy in law. Recognizing any such private duty would distract the Board from its general duty to protect the public, as well as its duty to deal fairly with participants in the regulated industry. Any such individualized duty of care would plainly

involve indeterminate liability, and would undermine the Board's ability to effectively address the general public obligations placed on it under its controlling legislative scheme.

[239] In *Elder*, the Supreme Court of Canada stated at para. 74:

[74] . . . Where the defendant is a public body, inferring a private duty of care from statutory duties may be difficult, and must respect the particular constitutional role of those institutions: *Welbridge Holdings Ltd. v. Greater Winnipeg*, [1971] S.C.R. 957, *per* Laskin J., as he then was, for the Court. Related to this concern is the fear of virtually unlimited exposure of the government to private claims, which may tax public resources and chill government intervention. It is arguable that to impose a duty of care on the plaintiff class on the facts pleaded would open the door to a claim in negligence by *any* patient in the healthcare system with an entitlement to receive funding for health services, whether primary or extended. This raises the spectre of unlimited liability to an unlimited class, decried by Cardozo C.J. in *Ultramares Corp. v. Touche*, 174 N.E. 441 (N.Y. 1931), at p. 444: see *Design Services Ltd. v. Canada*, 2008 SCC 22, [2008] 1 S.C.R. 737, at paras. 59-66.

[240] The Province argues that Mr. Doyle's decision to issue the Approvals involved both policy-making and quasi-judicial elements and were not merely operational decisions. The Province argues that engineers under the *Water Act* must act judicially in considering approval applications and determine the policies that should apply in each instance. This process, the Province says, is inconsistent with a duty of care to persons potentially harmed by approval holders' authorized works. For example, in *Cooper* at para. 52, the Court stated:

[52] In our view, even if a *prima facie* duty of care had been established under the first branch of the *Anns* test, it would have been negated at the second stage for overriding policy reasons. The decision of whether to suspend a broker involves both policy and quasi-judicial elements. The decision requires the Registrar to balance the public and private interests. The Registrar is not simply carrying out a pre-determined government policy, but deciding, as an agent of the executive branch of government, what that policy should be. Moreover, the decision is quasi-judicial. The Registrar must act fairly or judicially in removing a broker's licence. These requirements are inconsistent with a duty of care to investors. Such a duty would undermine these obligations, imposed by the Legislature on the Registrar. Thus even if a *prima facie* duty of care could be posited, it would be negated by other overriding policy considerations.

[241] The Province argues that faced with several competing interests (the District needing Mervyn Road repaired, the McLaughlins' desire to have their access

restored, PEP financial constraints and other limited resources), Mr. Doyle was entitled to issue the Approvals despite considering them ill-advised. The Province says that in doing so, he was making a policy-based and quasi-judicial decision that should not be the subject of judicial interference.

[242] I cannot agree. In my view, Mr. Doyle's mandate to issue the Approvals is contained entirely within s. 9 of the *Water Act*. He was engaged in operational and engineering decisions throughout. It cannot be said that his decision-making was quasi-judicial. As will be discussed later in these reasons, it cannot be policy for Mr. Doyle to issue approvals contrary to his engineering judgment, hold his nose, shrug his shoulders and "clear the books". The mere presence of multiple stakeholders does not convert an operational decision into a policy decision.

[243] Here, Mr. Doyle attempted to do what the Supreme Court of Canada has warned against in *Ernst and Elder*. His duty as a regulator was to protect the public by using his engineering judgment. While I agree that some balancing of interests was required, in the particular circumstances of this case and especially given his knowledge of the history of Sicamous Creek, Mr. Doyle was required to give weight to the hydrological issues and put his engineering expertise and judgment ahead of those other interests in exercising his discretion under s. 9.

[244] Other matters (such as the McLaughlins' "entitlement" to access or the limits of PEP funding) were the purview of others.

[245] The plaintiffs do not ask this Court to find that the Province owes a duty to exercise reasonable care in establishing conditions of approvals to *all* persons who may be affected by works subject to an approval. Insofar as approvals are concerned, the duty is only to *not* issue approvals on conditions that the decision-maker believes are inadvisable. Put another way, the duty is to not grant approvals in excess of statutory jurisdiction.

[246] I agree with this characterization.

[247] I am not persuaded that indeterminate liability is a basis for negating the *prima facie* duty of care in this case. The evidence is that *Water Act* engineers do not usually get involved at the level that Mr. Doyle became involved in this case. I do not accept that the class of individuals who would be owed a duty is as large as the Province suggests. In this case, it is restricted to persons who would be directly affected by the Approvals.

[248] In sum, there are no residual policy considerations that would negate the *prima facie* duty of care that I have found was owed to the plaintiffs by the Province.

[249] I conclude that the Province owed a duty of care to the plaintiffs as future owners and occupiers of the Vinco Property. There was a relationship of proximity that existed between them such that it was reasonably foreseeable that careless acts or omissions could result in injury.

b. Standard of Care

[250] To ground a claim in negligence against the Province, the plaintiffs must also establish that that Mr. Doyle's conduct fell below the standard of care that would be expected of an "ordinary, reasonable and prudent person in the same circumstances": *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201 [*Ryan*] at para. 28.

[251] The questions then are:

- i. What was the standard of care that would be expected of a person in Mr. Doyle's circumstances at the time?
- ii. Did Mr. Doyle breach that standard of care?

i. What Was the Standard of Care Expected?

[252] As has been indicated, Mr. Doyle was a regulator/engineer appointed under s. 9 of the *Water Act*. His job was to apply specialized knowledge and experience to the assessment of the works and to issue approvals on conditions he considered advisable.

[253] The plaintiffs did not adduce any expert evidence on the standard of care required of such regulators/engineers under s. 9 of the *Water Act*. They only adduced expert evidence on the standard of care of consulting engineers. The Province asserts that the standard of care of consulting engineers is different than that of regulatory engineers (such as those appointed under the *Water Act*) and that the plaintiffs' failure to call evidence on the point is fatal to their case.

[254] In the absence of such evidence, however, the Court may look to external factors, including legislative standards, policies and guidelines to determine the standard of care.

[255] In this case, I have the *Water Act*, the regulations made pursuant to it and Mr. Doyle's own evidence and documented concerns. In my view, that guidance, together with common sense and the practice described by Mr. Doyle, is sufficient to determine the required standard of care.

[256] Section 9 of the *Water Act* sets the standard. It says in part:

9(1) The ...engineer may grant an approval in writing authorizing on the conditions he or she considers advisable...

[257] The key words are "*he or she considers advisable*". Professional engineers are appointed under the *Water Act* for a reason. The reason being to ensure that engineering standards and considerations are enlisted in the highly technical and specialized nature of river hydrology as part and parcel of the considerations that go into s. 9 approvals.

[258] Mr. Doyle was a professional engineer hired by the Province to make s. 9 approval decisions based on his education, training and experience and on conditions he considered advisable from an engineering standpoint. His professional view of what was "advisable" should not have been compromised by political, economic or other factors. Those considerations were for others.

ii. Did Mr. Doyle Breach the Standard of Care?

[259] Mr. Doyle has been working as a professional engineer with the Ministry in the Water Branch for his entire career. He understood river hydrology and knew the risk that Sicamous Creek posed. He described it as a “hanging fire”, meaning that it was a disaster waiting to happen.

[260] I found Mr. Doyle to be frank and straightforward as a witness. He was knowledgeable, professional and refreshingly candid. As well as being a very experienced engineer with the Water Branch, he prided himself as a practical man too. That, unfortunately, was his undoing.

[261] When Mr. McLaughlin first requested permission to replace his bridge, the Province initially felt it would be acceptable to follow its general rule of thumb and allow him to proceed without a *Water Act* approval provided it was put back “at least 1 metre higher” and met the requirements of Part 7 of the *Water Regulation*.

[262] In fact, the *Water Regulation* was quite onerous and would have required Mr. McLaughlin at s. 44(1)(b)(iii) to ensure that:

(iii) the hydraulic capacity of the bridge is equivalent to the hydraulic capacity of the stream channel, or is capable of passing the 1 in 200 year maximum daily flow, and the height of the underside of the bridge is also adequate to provide free passage of flood debris...

[263] I conclude that the *Water Regulation* could not have been complied with without the design advice of a professional engineer qualified in river hydrology.

[264] Mr. Doyle would have known of the *Water Regulation* when he took control of the process in September 1997. The effect of his involvement was to supersede s. 44(1)(b)(iii) of the *Water Regulation* with his engineering judgment. He knew that his engineering expertise was required because of what he observed during site visits and fly overs in July 1997. He knew the McLaughlin Bridge’s location was tenuous.

[265] He knew that the Approvals in this case were not run-of-the mill *Water Act* approvals. Rather, these Approvals demanded his careful attention. Despite the District and the McLaughlins wanting the Works to move along quickly, there are some projects that simply cannot be rushed. This project was one of them. In issuing the Approvals, he knew his role was to minimize the foreseeable risks notwithstanding the financial, physical and other constraints existing at the time.

[266] The science of river hydrology is not something lay people like Mr. McLaughlin, Ms. Williams, Ms. Maurer and Mr. MacDonald should be expected to understand. That is why Mr. Doyle's involvement was so important. As between the Province, the District and the McLaughlins, he was the only person who understood the issues and knew what was required from an engineering standpoint.

[267] The District was also adamant that it wanted nothing to do with the McLaughlin Bridge Replacement. It would have been obvious to Mr. Doyle that neither the District nor the McLaughlins understood the significant issues involved.

[268] Nevertheless, he allowed himself to accept pushback from the District whose primary concern was completing the Mervyn Road repairs and Channel Restoration within PEP funding limits and DFO timing constraints. The District's pushback was driven to a large degree by Ms. Maurer's concerns about the height of Mervyn Road.

[269] I do not accept the defendants' submission that the decision to reduce the height of the McLaughlin Bridge (from the initial "at least 1 metre higher" to "1 metre higher", then to "at least 0.6 metres higher", and finally to "0.6 metres higher") occurred as a resulting of Mr. Doyle's balancing act that took into account the interests of Ms. Maurer, the Province and the District.

[270] It is clear that as regulator and engineer, Mr. Doyle did not want the McLaughlin Bridge replaced unless it was designed by a qualified professional engineer. This is why he was hesitant to remove Condition 'H' (requiring that the District sign off on the design). He only removed Condition 'H' due to pressure from the District and an instruction from Mr. Zackodnik to "clear the books".

[271] The Province says Mr. Doyle, as a regulator, was entitled to remove Condition 'H' at his discretion and his decision cannot be attacked. The Province further suggests that Mr. Doyle knew he lacked legal authority to impose Condition 'H' and that he had no authority to force the District to design or sign off on the bridge. According to the Province, this is another reason why Mr. Doyle removed Condition 'H'.

[272] I conclude that this suggestion is a defence after-thought. Firstly, there is no mention of this issue in any contemporaneous document. Secondly, Condition 'H' was only binding on Mr. McLaughlin to obtain the District's approval. If the District's approval was not forthcoming, the bridge could not be replaced.

[273] Mr. Doyle's trial evidence on this point is telling. Referencing a memorandum he wrote to the file:

Q. And you agree with me that you were "pretty pissed off" when you wrote this?

A. Yes.

Q. You were mad?

A. Aren't they equivalent?

Q. To some people, yes. But you were mad?

A. Yes.

Q. And the reason you were pissed off and mad when you wrote this was you did not want to approve the McLaughlin bridge without condition H?

A. Yes.

Q. Okay. In fact you were writing this memorandum because, in your words, you were "pretty disgusted with the way things were coming out the end of the pipe was that the McLaughlin bridge approval was not going to have condition H in it?

A. Yes.

Q. And the way things were going out at the end of the pipe seemed likely to you that the McLaughlin bridge would be built at 0.6 metres higher without a professional review by a qualified engineer?

A. Yes.

Q. And that was precisely the result you were desperate to avoid?

A. Yes.

[274] Mr. Doyle's examination for discovery testimony further confirms the point:

Q. Item H, "Approval of the bridge design is required from the District of Sicamous", you inserted that as a condition initially?

A. That was an important condition, I felt, initially, yes.

Q. And it was important because you wanted to ensure the bridge was professionally designed?

A. It – it was sort of a backup condition which reinforced C. If something went haywire with either one of them, hopefully one of them would – would make sure that the bridge was designed okay. You know, C, try – striving for getting somebody who knew what they were doing to design the bridge and take responsibility as a professional engineer meant H was – I just wanted some assurance from some other party other than us – like, other than the Ministry of Environment – that this thing had been approved for the very reason why we're sitting about here."

...

Q. So you were concerned that nobody was going to take responsibility for this bridge and you wanted to make sure somebody took responsibility for it?

A. Absolutely, because it – it was a bridge that was in a very difficult spot and it – it was clear to me that somebody's got to step up to the plate, as they say.

[275] It is clear that he never wanted the 0.6 metre height to be used as the design height, but nonetheless expected that the bridge was going back in at exactly 0.6 metres and that no qualified professional engineer would be engaged. In that sense, he simply paid lip service to Condition 'C' (the condition that the McLaughlin Bridge be designed by a qualified professional engineer and at least 0.6 metres higher than the lowest point of the previous bridge).

[276] The fact that the Province and District were seemingly at an impasse did not permit Mr. Doyle to fly in the face of obvious hazards just to smooth over a problem and "clear the books". That, in my view, misses the point of his s. 9 *Water Act* duties and by doing so, he acted outside the scope of those duties.

[277] Mr. Doyle testified that he did not like the conflict and wanted to "satisfy everyone's concerns". But this was not his job. He was not appointed as a mediator.

[278] In my view, Mr. Doyle should have stood by his engineering judgment and made it abundantly clear that Condition 'C' was still in play and the bridge required

the design of a qualified professional engineer notwithstanding the "at least 0.6 metres" minimum. At that point, it may well have meant a delay in the bridge reinstallation and may well have required Mr. McLaughlin to seek other remedies, including perhaps an appeal to the Environmental Appeal Board.

[279] Given Mr. Doyle's knowledge that Mr. McLaughlin was essentially on standby waiting for negotiations between the Province and the District to conclude, Mr. Doyle had a duty to clearly communicate his concerns to Mr. McLaughlin in a manner that Mr. McLaughlin could understand. Specifically, he was required to ensure that Mr. McLaughlin knew that he could not rely on the minimum 0.6 metre increase unless it was approved by a qualified professional engineer.

[280] Instead, through his words and actions, he allowed Mr. McLaughlin to assume that the 0.6 metre height increase was some sort of design height compromise between the District and Province and that the new bridge could be installed *exactly* 0.6 metres higher.

[281] The Province argues that Mr. Doyle's involvement must be put into context. That context being that Mr. Doyle was engaged in an emergency response. In that context, the Province argues, Mr. Doyle was acting as a regulator and assisting the District and Mr. McLaughlin solve the many problems that the 1997 Flood created. The Province maintains that Mr. Doyle acted reasonably in light of the situation.

[282] In hindsight, Mr. Doyle wished he had been clearer with his intention that Condition 'C' meant that the engineering of the McLaughlin Bridge required an engineer versed in river hydraulics:

Q. So you agree with me that the approval does not on its face require that the qualified professional engineer be versed in river engineering or river hydraulics?

MR. DOYLE: A. No, but I certainly wish that it would have said that.

Q. So you agree that it doesn't say it on its face.

A. Yeah. Twenty years later, I would strongly agree with that.

[283] As far as Mr. McLaughlin was concerned, despite the wording of the McLaughlin Bridge Approval, the height of the bridge had been dictated to him as exactly 0.6 metres higher than the previous bridge:

Q. And so it's fair to say that when you saw this 0.6 metre higher number in the approval, that you understood the reason it had changed from 1 metre higher down to 0.6 metre higher was that the District had a desire to do something about the height of your bridge because it was going to cause problems at 1 metre higher?

MR. MCLAUGHLIN: A. That's right.

THE COURT: So the approval, Mr. McLaughlin, said "at least 0.6 metres,"...What did you think that meant...?

A. That was the minimum I could go, this 0.6.

THE COURT: Did you ever ask for clarification of anyone?

A. No. I was – my first drawings I was prepared to go the 1 metre, and that would have satisfied the Ministry at that time but it didn't satisfy the District. So the District went back and got that ...reduced, and the Ministry agreed to it. So I just said, "Hey, they're both happy. Best of both worlds."

THE COURT: Am I hearing you say that the Ministry said to you with the approval – and you understood the Ministry had authority over the creek – "at least 0.6 metres" –

A. Right.

THE COURT: – but from discussions you had, understandings you had from the District, they wanted it as low as they could get away with?

A. That was when the statement was 1 metre...They wanted to reduce it because of access to both sides of the road....

THE COURT: Understood. But the approval said "at least 0.6 metres"? ...So did you interpret that to mean 0.6 metres?

A. Yes.

THE COURT: Where did you get that from?

A. Like I said, they both agreed to it. So if I would have gone higher and it would have cost the District more money, I'm sure I would have got some feedback and some pressure to reduce that to the 0.6.

THE COURT: That was your assumption?

A. That was my assumption, yes, pardon me.

[284] Despite Mr. Doyle's stated concern that the bridge height be engineered, he conceded that he was aware that the working design was only 0.6 metres higher. In cross-examination, he gave this testimony:

Q. Mr. Doyle, when we were going over the February 26th, 1998 site meeting relating to Mervyn Road, the channel restoration works and the McLaughlin bridge, you agreed with me that the discussion at that meeting in relation to the McLaughlin bridge was that it would be reinstalled 0.6 meters higher.

MR. DOYLE: A. Yes.

Q. And it is fair to say that everyone at that meeting regarded the 0.6 metre higher elevation as the working design for the McLaughlin bridge reinstallation?

A. Yes.

Q. And that 0.6 metre working design had come out of your discussions with Ms. Smith (Williams)?

A. Yes.

Q. And so by the time of that February 26, 1998 site visit, the 0.6 metre height increase that you had accepted was the working design for the height of the McLaughlin bridge reinstallation?

A. Yes.

[285] Despite this, Mr. Doyle somehow felt that it was still up to Mr. McLaughlin to comply with Condition 'C' and have a qualified professional engineer check the design.

[286] If, as the Province seems to suggest, Mr. Doyle was permitted to issue approvals when his engineering judgement told him that it was *not* advisable to do so, how could he be said to be acting within the scope of his mandate? In my view, he could not be.

[287] I conclude that Mr. Doyle fell below the standard of care of engineers appointed under the *Water Act*. He allowed other considerations to influence his duties. To the extent that he made the Approvals conditional, he did not take adequate steps, knowing what he knew, to make sure they were understood.

[288] Mr. Doyle was clearly frustrated with the District's position and with what was happening. By trying to be practical, he forgot his role as a *Water Act* engineer and allowed his frustration to get the better of him. He did not exercise the judgment that an "ordinary, reasonable and prudent" engineer appointed under the *Water Act* would have in the same circumstances.

c. Is the Province Liable to the Plaintiffs in Negligence?

[289] In *Carhoun*, our Court of Appeal commented on the liability of public regulators at para. 43:

[43] I begin by noting that public regulators are not exempt from civil liability. The Supreme Court of Canada has affirmed the importance of this liability, saying: "It is important for public authorities to be liable in general for their negligent conduct in light of the pervasive role that they play in all aspects of society. Exempting all government actions from liability would result in intolerable outcomes": *R. v. Imperial Tobacco*, 2011 SCC 42 at para. 76.

[290] The Province says that in granting the Approvals, Mr. Doyle was simply following operational orders: firstly, to restore the channel to its pre-1997 Flood condition, and secondly, to approve the re-installation of the McLaughlin Bridge.

[291] A compromise to balance competing interests and funding issues is generally acceptable, but not, in my view, at the expense of professional engineering judgment. In effect, the Province says that, given the simultaneous interaction between the *Water Act* and the *Emergency Program Act*, it was impossible for Mr. Doyle to comply with his duty under s. 9 of the *Water Act*.

[292] I disagree.

[293] Had a qualified professional engineer been engaged by the McLaughlins, I conclude that the bridge would not have been replaced only 0.6 metres higher than it was previously. The only expert evidence on the point was from Mr. LaCas who opined that, given the information available at the time, it should have been 2.4 metres higher. I accept his evidence on this point. Mervyn Road would have been required to accommodate the additional height. There is no evidence before me on what would have been required to construct Mervyn Road to accommodate a higher bridge height or what the cost would have been but I am satisfied that it would not have been prohibitive. It would simply have involved a ramp or approach of some kind.

[294] Mr. Doyle's site inspection on April 1, 1998, disclosed that the Channel Restoration did not meet the conditions of the Channel Restoration Approval. He foresaw that if the McLaughlin Bridge Replacement went ahead, the completed package of bridge and channel were going to be more hazardous under high flow conditions than they were before the 1997 Flood.

[295] Despite this, he took no steps to remedy the problem. He simply noted the concerns in a memo. At that point, the McLaughlin Bridge Replacement had not begun. It was at this point even more critical that the McLaughlins knew the importance of having the bridge height engineered.

[296] I liken this case to building inspection cases such as *Kamloops, Rothfield v. Manolakos*, [1989] 2 S.C.R. 1259, and *Ingles v. Tutkaluk Construction Ltd.*, [2000] 1 S.C.R. 298, where subsequent homeowners have been successful at trial after suffering loss or damage due to the failure of building inspectors to inspect or ensure compliance with building codes (as described in *Imperial Metals*, paras. 51-64).

[297] Similarly in building inspection cases, a building inspector issue blueprints (or, in this case: "Approvals") in accordance with building codes (in this case: on certain conditions deemed advisable). Continuing with the analogy, imagine a case where the house (in this case: bridge) is built but the building inspector (in this case: *Water Act* regulator engineer) is aware that it is not up to code. Despite this, he or she does nothing about it other than note his or her concerns in a file memo.

[298] Likewise in this case, future affected owners (Vinco and Waterway) are entitled to expect that works are completed "up to code", or in other words, in accordance with approvals.

[299] As a result of Mr. Doyle's negligence, the Province is liable to the plaintiffs.

d. Privative Clauses in the *Water Act*

[300] The Province says that even if this Court finds that Mr. Doyle failed to meet the standard of care, the Province is entitled to the protection of the privative clauses in ss. 48 and 49 of the *Water Act*, the relevant sections of which then read:

48. An action may not be brought against ... a[n] engineer ... for anything done or left undone by that person in good faith in the performance or intended performance of an authority conferred or duty imposed under this Act. . . .

49. Except as otherwise provided in this Act, a[n] ... investigation...or order of the ... engineer must not be questioned, reviewed or restrained by injunction, a proceeding in the nature of prohibition or other process or proceeding in any court. . . .

[301] The Province argues that no action can lie against Mr. Doyle due to the fact that he was acting in good faith when the Approvals were issued. Further, the Province says that the discussions Mr. Doyle had with the District, the McLaughlins and other stakeholders were an “investigation” within the meaning of s. 49.

[302] The Province’s arguments can be disposed of quickly.

[303] First, the plaintiffs have not brought an action against Mr. Doyle. The action is against the Province. In my view, while s. 48 will protect Mr. Doyle provided that he acted in good faith, it does not protect the Province from Mr. Doyle’s negligence. Second, s. 49 uses language of judicial review. In the context of this case, it means that judicial review proceedings could not have been brought to question, restrain, stop or interfere with Mr. Doyle’s investigation into matters concerning the 1997 Flood. Section 49 does not protect the Province for Mr. Doyle’s negligent acts.

XII. THE WATER ACT LIABILITY

a. Purpose and Interpretation of the *Water Act*

[304] The purpose of the *Water Act* is management of public water in the public interest: *Western Canada Wilderness Committee v. British Columbia (Oil and Gas Commission)*, 2014 BCSC 1919.

[305] Section 2 of the *Water Act* vests the right to the use of and flow of all water in streams in British Columbia and requires any modifications to the nature or flow of a stream or any activity or construction that may have an impact on a stream to be made only with the written approval of an engineer under the *Water Act* on conditions he or she considers advisable, or in accordance with the regulations.

[306] The *Water Act* is strict. The Province has complete control over the use of water and over any changes to streams, stream beds or bridges spanning streams. That authority is granted to the Province for good reason.

[307] The regulations made pursuant to the *Water Act* are important because when the Province first advised Mr. McLaughlin via Mr. Costerton's August 7, 1997 letter that he could replace his bridge without a *Water Act* approval, he was still required to comply with the regulations. The relevant section of the *Water Regulation* as it was in the 1997/1998 timeframe is s. 44(1)(b)(iii):

(1) For the purposes of section 9 of the *Water Act*, the following changes in and about a stream may be made without obtaining an approval or licence for that change, provided that the change is made in accordance with this regulation:

(b) the construction, maintenance or removal of a clear span bridge, provided that

(iii) the hydraulic capacity of the bridge is equivalent to the hydraulic capacity of the stream channel, or is capable of passing the 1 in 200 year maximum daily flow, and the height of the underside of the bridge is also adequate to provide free passage of flood debris and ice flows,

[308] Under the *Water Regulation*, the McLaughlin Bridge could only have been replaced if it was capable of passing a 1 in 200 year flood and it was high enough to provide free passage of a debris flood. In order to rebuild without an approval, therefore, Mr. McLaughlin would have needed to retain a qualified professional engineer qualified in water engineering and hydraulics to ensure s. 44(1)(b)(iii) of the *Water Regulation* was satisfied.

[309] Respecting the consequences of an approval holder working in or about a stream, there was much debate between the parties as to whether the provisions of

s. 21(1) of the *Act* are conjunctive (the plaintiffs' position) or disjunctive (the defendants' position). The provision is again reproduced below:

21(1) A licensee, holder of an approval or person who makes a change in and about a stream in accordance with the regulations must

(a) exercise reasonable care to avoid damaging land, works, trees or other property, and

(b) make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works

[310] I agree with the plaintiffs that s. 21(1) is conjunctive. This means that despite holders of an approval using reasonable care in performing works in a stream as authorized by the approval, they are nevertheless liable for damage caused by the "construction, maintenance, use, operation or failure of the works".

[311] Previous versions of British Columbia's *Water Act* provide insight into legislative intent behind the section. Of relevance, the 1939 *Water Act* (indexed at 1939 S.B.C. 323) [1939 *Act*] reads as follows:

Licensee to make compensation for damage

16. (1) Every licensee shall exercise reasonable care to avoid damaging any land, works, trees, or other property, and shall make full compensation to the owners for any damage or loss resulting from the construction, maintenance, use, or operation of the licensee's works.

(2.) Subject to subsection (1), every holder of a licence for power purpose or waterworks purpose shall have authority to fell and remove any tree and to remove any rock or other thing that endangers his works. R.S. 1936, c. 305, ss. 85, 134 (i) (*redrawn*).

[Emphasis added.]

[312] Subsection 16(1) of the 1939 *Act* encompasses both ss. 21(1)(a) and (b) of the *Water Act* in place at the time of these events. In my view, the intention in the 1939 *Act* was that a licensee had to exercise reasonable care *and* make full compensation. In further support of a conjunctive interpretation, the heading itself reads: "Licensee to make compensation for damage". Subsection 16(2) also makes more sense in that context: a licensee can remove rocks and trees but subject to s. 16(1), he or she must compensate for such removal if it damages land.

[313] The 1939 Act provision was redrawn from an earlier version of that provision in the 1914 *Water Act* (indexed at 1914 S.B.C. 81) [1914 Act] which reads as follows:

Licensee to make compensation for damage

88. Every licensee, when constructing, maintaining, or operating his works, or when entering upon any lands in connection with the rights granted him under this Act, shall do as little damage as possible, and shall make full compensation to all owners thereof for any loss, damage, or injury done when exercising the powers aforesaid, which compensation shall, failing agreement, be determined by arbitration pursuant to the "Arbitration Act." 1914, c. 81, s. 29.

[314] This provides further support that the provision is conjunctive. It also provides some insight on the legislature's intent in adding the "reasonable care" phraseology. The 1914 Act provision does not suggest that a licensee is absolved from liability if he or she acts reasonably.

[315] Section 21(a) is *action* focused. It is not restricted to "works". Section 21(b) is restricted to works.

[316] Therefore, the McLaughlins, as holders of the McLaughlin Bridge Approval, and the District, as holder of the Channel Restoration Approval, were required to comply with both s. 9(2) and ss. 21(1)(a) and 21(1)(b). They were only allowed to make changes in and about a stream *in accordance with an approval* and were not only required to exercise reasonable care to avoid damaging land and other property, but were obliged to make full compensation to owners for damage or loss resulting from any of the works that they implemented.

[317] In other words, s. 21(1)(b) means what it says: if the construction, maintenance, use, or operation of the works fail, full compensation must be made by the approval holder. Even if reasonable care is taken, the holder of the approval is still liable to make full compensation to those who meet the definition of "owners" for any damage incurred from implemented works.

[318] “Works” as defined include “obstructions placed in or removed from streams or the banks or beds of streams” as well as “changes in and about a stream” which include “any activity or construction within a stream channel that has or may have an impact on a stream or stream channel”.

[319] As approval holders, both the District and the McLaughlins are strictly liable to Vinco and Waterway as “owners” for damage caused by the Channel Restoration and McLaughlin Bridge Replacement. Vinco and Waterway are the only plaintiffs that have a potential claim under s. 21 of the *Water Act* because they are the only ones who meet the definition of “owner” under the *Water Act*.

[320] They have two available causes of action: (1) against the McLaughlins as the holders of the McLaughlin Bridge Approval (it was admitted at trial that even though the approval is in Mr. McLaughlin’s name only, it was issued to both) and (2) against the District as the holder of the Channel Restoration Approval.

b. Discussion

i. The Channel Restoration Approval

[321] The Channel Restoration resulted from a mandate issued by the Province to fund what was required to restore the creek bed to its pre-1997 Flood condition. There was no funding for any additional work. It is clear that the District reluctantly agreed to undertake the Channel Restoration.

[322] The District was motivated to negotiate with the Province for a lower height for the McLaughlin Bridge due to Ms. Maurer’s concerns and also the cost associated with raising Mervyn Road. The McLaughlin Bridge height issue was holding up the Channel Restoration and Ms. Williams was pressuring the Province to resolve the matter quickly. By February 4, 1998, she was frustrated and wanted to bypass the “bureaucratic assessment” of the bridge elevation. She was “reluctant to debate the issue further considering the potential for political and private property owner conflict and ramifications”.

[323] I am satisfied that Ms. Williams took a very narrow view of the problem of Sicamous Creek. She simply wanted Mervyn Road rebuilt in a way that would minimize any impact to the Beachcomber Campground and at a cost that would be paid by PEP.

[324] Before issuing the Approval, Mr. Doyle requested pre- and post-channel cross-sections. He wanted to know the scope of the proposed work. It is instructive that Ms. Williams apparently did not appreciate the importance of pre- and post-1997 Flood channel cross-sections. It is not surprising, however, that she did not appreciate the scope of the issue. It was far beyond her expertise. Cross-sections were never provided. Mr. Doyle was the only qualified engineer present during the February 26, 1998 site meeting when the Channel Restoration design was completed. I find that Mr. Doyle provided the design for the Channel Restoration.

[325] I find that those present discussed channel bank protection and agreed on the type of riprap to be used. I find that they also agreed that the channel should not be "necked-down" by the riprap causing a reduction of the channel size. In other words, the consensus reached was that the channel should be restored to its pre-1997 Flood condition but the channel size was not to be reduced.

[326] Those discussions led to the mandatory conditions in the Channel Restoration Approval. Those conditions included that angular riprap be used to reduce channel encroachment and the chances of it falling into the creek during high water flow.

[327] Other than hiring Mr. Whitehead, it is apparent that the District did nothing else. Mr. Whitehead was not supervised. I infer that, because of his experience, he was left to do what he felt needed to be done and he was not privy to or aware of the hydrological issues involved in the lower reaches of Sicamous Creek. Nor should he have been – that was Mr. Doyle's domain as a *Water Act* engineer and the District's domain as the holder of the Channel Restoration Approval.

[328] The District argues that it did not have any obligation to provide supervision to its contractor, Mr. Whitehead, to ensure compliance with the terms of the Approval.

[329] I disagree. Implied in the Approval is the obligation to ensure the Works were carried out in accordance with its terms. Although Mr. Whitehead's credentials and abilities were not challenged and there is no debate that he was qualified, it misses the point to suggest that because the Approval did not require the District to supervise its contractor, it can escape responsibility for ensuring the conditions of the Approval were complied with.

[330] Respecting the District, Conditions 'L' (angular riprap) was not complied with. Riprap is used to prevent erosion of river/stream banks. Mr. Doyle wanted angular rock because it has a much better chance than round rock of withstanding high water flows. In fact, contrary to Condition 'L', Mr. Whitehead used round rock mixed with angular rock.

[331] Condition 'M' (finished cross-sectional area could not be smaller than it was before) was also not complied with. There is no evidence that Mr. Whitehead was instructed about or even knew of Conditions 'L' and 'M'. Indeed, the evidence suggests he was simply left to his own devices after given a general overview of his mandate.

[332] The District argues that no evidence was adduced that would suggest that the use of angular rock would have made any difference to the channel. The District submits that for me to find otherwise would amount to guesswork and conjecture: *Kerr (Litigation Guardian of) v. Creighton*, 2008 BCCA 75 at paras. 58-62.

[333] I disagree. Mr. Doyle explained that angular rock was to be used due to its ability to withstand heavy creek flows and minimize bank erosion. I accept that the riprap installed by the District did not meet the conditions of the Channel Restoration Approval and I accept that the failure to install the specified riprap contributed to the overall events resulting in the Blockage.

[334] I conclude that during peak flow, the force of the creek would have torn apart the riprap and transported it downstream thus contributing to the Blockage at the McLaughlin Bridge. Angular riprap, if it was in place, would have been more resistant to being dislodged. The photographs of the aftermath corroborate this finding.

[335] In the District's case, I find that Conditions 'B', 'C', 'F', 'L' and 'M' of the Channel Restoration Approval were not complied with. The channel was not dredged to its pre-1997 Flood depth (Condition 'B') nor did it comply with the Harding Sketches or with the "mutually agreed conditions of work". Further, the final channel profile was not hydraulically stable (Conditions 'C' and 'F'), improper riprap was used (Condition 'L') and the protected channel cross-section was smaller than it was before (Condition 'M').

[336] In sum, I find that the non-compliance with these conditions contributed to the events leading up to Avulsion 'A'.

ii. The McLaughlin Bridge Approval

[337] Mr. McLaughlin was present during the 1997 Flood and witnessed the damage caused by the McLaughlin Bridge at that time. He knew the explosive power of the creek.

[338] Without asking for clarification, and knowing that the creek bed was shallower than it was before the 1997 Flood, Mr. McLaughlin nevertheless took the words of the Approval "*at least* 0.6 m" as approved by a qualified professional engineer, to mean "*exactly* 0.6 m" without approval by a qualified professional engineer.

[339] After the McLaughlin Bridge Replacement, Mr. McLaughlin saw that there was less clearance between the bridge and the creek bed than before the 1997 Flood even though the bridge itself was 0.6 metres higher. He wanted more clearance but did not think to do so during construction because he believed the 0.6 metres height increase was a direction by the Province and the District. He recorded his concerns in contemporaneous notes shortly after the McLaughlin Bridge

Replacement was complete. I accept Mr. McLaughlin's evidence on this point. Indeed, both Mr. Doyle and Ms. Maurer noted the same thing.

[340] In the McLaughlins' case, I find that Condition 'C' requiring that "all works" be designed by a qualified professional engineer was not complied with. The McLaughlins should have known that the term "qualified professional engineer" meant a hydrological engineer with expertise in bridges and river hydraulics. Even if they did not know, they should have taken steps to determine what was meant by "qualified professional engineer". Accordingly, the McLaughlins are liable under the *Water Act* and cannot take advantage of the defence of due diligence.

iii. Summary of Water Act Liability

[341] In my view, the District's and McLaughlins' failure to comply with the Approvals make them liable to make full compensation to owners as defined by the *Water Act* for any damage or loss resulting "from the exercise of the rights granted" by the Approvals.

[342] This means any loss or damage caused to the Vinco Property and Waterway reasonably flowing from the Channel Restoration, McLaughlin Bridge Replacement or a combination of both fall at their respective feet.

XIII. CONTRIBUTORY NEGLIGENCE/VOLUNTARY ASSUMPTION OF RISK

[343] The defendants argue that if they are found liable to the plaintiffs in negligence, Waterway and Vinco ought to be found contributorily negligent for moving the business to the Vinco Property in 2008 despite knowing the substantial risk of flooding that Sicamous Creek posed.

[344] Waterway and Vinco acquired this knowledge through the EBA Reports, which were originally commissioned for the purpose of a proposed development (the project was abandoned with the 2008 recession). The EBA Reports cautioned against the project and warned of a significant hazard of flooding. Indeed the conclusion of the flood hazard assessment stated:

Sicamous Creek is judged to be subject to debris flood, rather than debris flow, and the hazard is considered to be moderate to high . . .

[345] The EBA Reports recommended flood mitigation measures be taken if the contemplated development were to proceed. No flood mitigation works were initiated because the development was abandoned.

[346] In *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210 [*Bow Valley*], McLachlin J. (dissenting in part), defined contributory negligence this way at para. 76:

[76] I accept the defendants' submissions. The test for contributory negligence was summarized by Denning L.J. in *Jones v. Livox Quarries Ltd.*, [1952] 2 Q.B. 608 (C.A.), at p. 615:

Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.

[347] The defendants contend that the plaintiffs failed to act reasonably in the face of a significant foreseeable risk of flooding by failing to take any steps to mitigate that risk.

[348] I agree. I find that Vinco and Waterway knew that the Vinco Property was naturally prone to flooding and accepted that flooding would occur from time to time. Despite the clear warning in the EBA Reports, I find that they ignored the issue. Knowing what they knew, flood mitigation measures of some kind should have been undertaken by them and their failure to do so was unreasonable in the circumstances.

[349] The defendants have met their burden in proving contributory negligence on a balance of probabilities.

[350] I assess Vinco's and Waterway's degree of fault collectively at 25%.

XIV. JOINT TORTFEASORSHIP

[351] Joint liability in negligence may be found where there is a concerted action between two or more parties to a common end. In such cases, both parties can be liable for any tort committed by the others. Three conditions must be satisfied in order to find liability on that basis: (1) the defendant must have provided substantial assistance to the commission of an act by the primary tortfeasor; (2) the assistance must have been pursuant to a common design on the part of the defendants that the tort be committed; and (3) the act must constitute a tort as against the claimant:

I.C.B.C. v. Alexander, 2016 BCSC 1108 [*Stanley Cup Rioters*] at paras. 25-26.

[352] The plaintiffs say that if a finding is made that the Province was negligent, the McLaughlins and the District are also guilty of negligence as joint tortfeasors. They argue that because all three defendants were engaged in a concerted action to a common end respecting the McLaughlin Bridge Replacement and Channel Restoration, they are each liable for any tort committed by the other. Specifically, the plaintiffs assert that the Province and District assisted the McLaughlins with a common design for the bridge height.

[353] Before joint liability will be found, the participating defendants must be engaged in a wrongful (as opposed to lawful) purpose. If they are acting together for a lawful purpose that is potentially dangerous, the joint tortfeasor concept does not apply: *Martin v. Martin*, [1996] N.B.J. No. 167 (C.A.) at paras. 20-21.

[354] In *Stanley Cup Rioters*, Myers J. explained the difference at paras. 14-19:

[14] It is important in the present case to distinguish the concepts of joint tortfeasorship and joint and several liability. It is also important to set out the criteria for the concepts and to delineate their boundaries.

[15] There have been numerous descriptions of the concepts. The classic case is the English Court of Appeal's judgment in "*Koursk*" (*The*), *Re* [1924] P. 140, which dealt with collisions between three vessels. Perhaps the most commonly cited academic work is Glanville Williams, *Joint Torts and Contributory Negligence* (London: Stevens & Sons, 1951). He set out the following typology at pages 1-16.

A. Joint Tortfeasors – Joint Liability

[16] Two or more tortfeasors are joint tortfeasors in one of the following three situations:

1. Where one is the principal of or vicariously liable for another (p. 6);
2. Where a duty imposed jointly upon them is not performed (p. 9);
3. Where there is concerted action between them to a common end (p. 9).

B. Several Concurrent Tortfeasors – Joint and Several Liability

[17] Several concurrent tortfeasors are independent tortfeasors whose acts concur to produce a single result (p. 16). This can occur in two circumstances: where two causes are necessary in order to effect the consequence or where either cause would be sufficient in itself to produce the consequence. The common characteristic is that it is impossible to apportion the damage among the different tortfeasors.

[18] Williams refers to all the above as concurrent tortfeasors. Concurrent tortfeasors are generally liable for all of the (same) damages. Other cases and works refer to this as joint and several liability. The use of the phrase "joint tortfeasorship" in this circumstance is inaccurate and misleading: per Bankes L.J. in *The Kursk* at p. 150. The High Court of Australia drew a helpful delineation in *Thompson v. ACTV* (1996), 186 CLR 574 at 580-1:

The difference between joint tortfeasors and several tortfeasors is that the former are responsible for the same tort whereas the latter are responsible only for the same damage.

C. Several Tortfeasors causing different damages – Several Liability

[19] The third related category that arises in cases where there are multiple people involved in an event or a case is that of several tortfeasors causing different damage. In this instance each tortfeasor is liable only for the damage which he has caused by himself.

[355] Applying the law to this case, there was nothing unlawful about the reinstallation of the McLaughlin Bridge or the Channel Restoration *per se*. The plaintiffs' complaint is that it was the combination of the Works that resulted in the clearance being significantly less than it should have been.

[356] The District cannot be said to have acted together with the Province or the McLaughlins respecting the bridge construction other than negotiating its height. The McLaughlins simply went along with what the Province and District negotiated.

[357] In my view, this is not a case where the concept of joint tortfeasorship applies. The Province's role was engaged by the duties imposed under the *Water Act*. The District's duties were dictated by the Channel Restoration Approval and the

McLaughlin's duties were dictated by the McLaughlin Bridge Approval. There was no "common design" that would attract liability in the nature of joint tortfeasorship as contemplated in law.

XV. NUISANCE

[358] As I have indicated, liability in this case can be decided based on the principles of negligence (as against the Province) and the *Water Act* (as against the District and McLaughlins). However, if I am wrong, I will provide my comments on liability in nuisance against the Province.

a. Public Nuisance Claim Against the Province

[359] A public nuisance is any activity that unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience. The conduct complained of must amount to an attack upon the rights of the general public to live their lives unaffected by inconvenience, discomfort or other forms of interference: *Ryan* at paras. 52-53.

[360] The "unreasonableness" of the interference must be substantial and not just a trivial annoyance. The interference must be intolerable to an ordinary person, and must be assessed considering the nature, severity and duration of the interference, the character of the neighbourhood, the sensitivity of the plaintiffs' use and the utility of the activity: *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at para. 77.

[361] The damage complained of must be "special" in the sense that it rises above that of the general public and is of a different "kind" and "degree": *Stein v. Gonzales* (1984), 58 B.C.L.R. 110 (S.C.). As was explained by McLachlin J. (as she then was) in *Stein* at paras 4 and 5:

[4] Public rights, including claims for public nuisance, can be asserted in a civil action only by the Attorney General as the Crown officer representing the public. A private person can bring an action for an alleged or anticipated breach of the law only where that breach would constitute a breach of his private rights or would inflict "special" or "peculiar" damage upon him . . .

[5] The policy behind this rule is that the public and criminal jurisdiction of the court is not to be usurped in a civil proceeding. As long as the suffering or inconvenience is general, there is no place for independent intervention by

private citizens. This rule, which prevents individuals from taking upon themselves the role of champions of the public interest, has been said to be established "for the purpose of preventing oppression by means of a multiplicity of civil actions for the same cause" . . .

[Citations omitted.]

[362] Therefore, to succeed in a claim for public nuisance, the plaintiffs must show that the Province caused an unreasonable interference with a public right and that they suffered "special" or "peculiar" damage that was more egregious than any damages suffered by the general public rising out of the same interference.

[363] In this case, the plaintiffs assert that the interference with Mervyn Road, the beach adjacent the Vinco Property, the public foreshore and the public boat ramp all constitute "special" damage.

[364] The beach belongs to the Province up to the high water mark and the public has access to it. The Province has a lease agreement with Vinco that allows it to build the Waterway docks. The plaintiffs' claim is essentially that the beach is less attractive now than it was before the 2012 Flood.

[365] The evidence does not establish that the public access to the beach or foreshore was limited for more than three weeks. While there is no doubt that the beach as it now appears is different than it was before, I am not satisfied that the difference in appearance was of operational significance to either Vinco or Waterway. By its nature, waterfront property situated on a fan delta can be expected to change from time to time. There is no public right to an attractive beach. Thus, I am not persuaded that there was an interference with the public's interest in the beach – accordingly, the claim for the beach adjacent to the Vinco Property fails on the first element of public nuisance.

[366] Respecting Mervyn Road, while there is no dispute that a public right-of-way exists over it and that the 2012 Flood blocked access to it, I am not satisfied that the plaintiffs suffered special damage by its blockage. Indeed, the evidence is that once Mervyn Road was blocked the plaintiffs immediately opened and used an alternative access from Highway 97A to the Vinco Property.

[367] Respecting the foreshore, there is no evidence of an interference with the public's right to access it, never mind evidence that the plaintiffs suffered special damage as a result.

[368] Respecting the public boat launch, while the plaintiffs' temporary inability to use the ramp was inconvenient, there is no evidence that proves that the plaintiffs suffered any greater inconvenience than did the general public. Further, the evidence is that trees and other debris flushed into Mara Lake *prior* to the Blockage – in other words, the interference would have been caused regardless of the defendants' acts.

[369] The plaintiffs allege that the public nuisance resulted from the Blockage caused in part by the inadequate Channel Restoration. There is no allegation that the Province caused direct harm to the Vinco Property, but rather that the Province permitted the District and the McLaughlins to perform the Works.

[370] The Province says that Waterway's nuisance claim against the Province is unprecedented. No case has been produced where nuisance has been found against a government regulator for lawfully authorizing the activities of others.

[371] On this point, I agree with the Province. The plaintiffs' claim against the Province for public nuisance fails.

b. Private Nuisance Claim Against the Province

[372] Private nuisance can be described as the unreasonable interference with the use and enjoyment of land that would not be tolerated by the ordinary occupier: *Canadian Tort Law*, at 548-549. Anyone who actively creates a nuisance can be liable and that liability will continue for as long as the offensive condition remains.

[373] The following general definition of private nuisance was adopted by the Court of Appeal in *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft*, [1979] B.C.J. No. 2068 (C.A.) at para. 10:

[10] A person . . . may be said to have committed the tort of private nuisance *when he is held to be responsible for an act indirectly causing*

physical injury to land or substantially interfering with the use or enjoyment of land or an interest in land where, in the light of all the surrounding circumstances, the injury or interference is held to be unreasonable.

[Emphasis in original.]

[374] Respecting the Individual Houseboat Owners, they have not established, nor have they attempted to establish, that they had an interest in the land that was affected by the 2012 Flood. Therefore, they do not meet the threshold required to advance a claim in private nuisance. That leaves Waterway and Vinco.

[375] The onus of proving that the defendant caused unreasonable interference with the use and enjoyment of the plaintiffs' land rests with the plaintiffs. Once demonstrated, the onus shifts to the defendant to show that the use of the land was reasonable: *Canadian Tort Law* at 550.

[376] The plaintiffs assert that the McLaughlin Bridge Replacement and Channel Restoration caused a private nuisance when they interfered with the flow of Sicamous Creek and caused a flood to the Vinco Property.

[377] The Province denies that it can be found liable for private nuisance. The Province reiterates that it merely granted the Approvals for the McLaughlin Bridge Replacement and the Channel Restoration and that it did not undertake the actual construction of either project. Rather, those projects were the responsibility of the other defendants pursuant to their *Water Act* Approvals. The Province neither owned nor created the Works that the plaintiffs allege gave rise to actionable nuisance.

[378] The plaintiffs, however, do not claim against the Province as the owner of Sicamous Creek, but instead for issuing the Approvals that enabled the other defendants to cause the nuisance. They assert that by designing and approving the Channel Restoration and providing directions for the height of the McLaughlin Bridge Replacement, the Province failed to abate the nuisance and is therefore liable.

[379] I cannot accede to this argument. Such a concept was rejected in *Hoffman v. Monsanto Canada Inc.*, 2005 SKQB 225 where the Court stated at para. 122:

[122] The tort of nuisance imposes strict liability when the conditions for its application are met. The implications of holding a manufacturer, or even inventor, liable in *nuisance* for damage caused by the use of its product or invention by another would be very sweeping indeed. It is my conclusion that where the activity complained of is the activity of one who is not in occupation or control of adjoining land, and no independent malfeasance is alleged, then, at the very least, direct causation of the damage alleged must be alleged. This is not the case. I conclude that there are no facts alleged in this case that could support a finding that the defendants substantially caused the nuisance alleged.

[380] Other than issuing the Approvals, there is nothing the Province did that directly impacted the Vinco Property. Respecting the plaintiffs' allegation that the Province failed to abate the nuisance, I agree with the Province that it had no obligation to do so considering the nuisance existed by virtue of a natural hazard resulting from a naturally occurring watercourse: *Lynds v. Runge*, 2002 BCSC 1579 at para. 52.

[381] The plaintiffs' claim against the Province in private nuisance fails.

XVI. CAUSATION

[382] Before the defendants will be liable in damages, the plaintiffs must prove causation.

[383] The test for proving causation is the "but for" test. The plaintiffs must prove on a balance of probabilities that "but for" the construction of the Works, the damage they suffered would not have occurred: *Clements v. Clements*, 2012 SCC 32 at para. 8. In other words, the question is: even if the Province, the District and the McLaughlins did what the plaintiffs say they should have done, would it have made any difference?

[384] The "but for" causation analysis is to be applied using a robust, pragmatic and common sense approach. Scientific certainty is not required. Inferences of causation may be drawn on the basis of common sense. Causation can be inferred – even in the face of inconclusive or contrary expert evidence – from other evidence, including merely circumstantial evidence: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 54;

British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Valley Health Authority, 2016 SCC 25 at para. 38.

[385] Justice Garson (in dissent in the result) summarized the basic principles in *British Columbia v. Canadian Forest Products Ltd.*, 2018 BCCA 124 at para. 135 as follows:

[135] To summarize, the following principles emerge from the Supreme Court of Canada's jurisprudence on causation in negligence:

- a) The appropriate test for causation is the "but for" test, except in rare circumstances unrelated to this appeal: *Clements*.
- b) Courts must take a common-sense approach to "but for" causation rather than requiring certain or scientific proof of causation: *Snell* at 328; *Clements* at para. 9.
- c) The burden of proof remains with the plaintiff: *Snell* at 330. However, as in other fact-finding contexts, a court may infer "but for" causation based on an assessment of all the evidence if the defendant fails to introduce sufficient evidence contrary to the plaintiff's theory of causation: *Clements* at paras. 10-11.
- d) In determining whether the defendant has introduced sufficient evidence to contradict the plaintiff's theory of causation, the trier of fact may consider the relative positions of the parties to adduce evidence on causation: *Benhaim* at para. 54. In other words, evidence should be "weighed according to the proof which it was in the power of one side to have produced and in the power of the other to have contradicted": *Blatch v. Archer* (1774), 98 E.R. 969 at 970, cited in *Clements* at para. 11, *Benhaim* at para. 48.
- e) Even if the defendant's negligence created causal uncertainty and the plaintiff has adduced some evidence in support of its theory of causation, the trial judge is not obliged to draw an inference of causation against the defendant: *Benhaim* at para. 42.
- f) The trial judge's decision to infer or not infer causation is a finding of fact and attracts deference on appeal: *Benhaim* at paras. 36, 42.

[386] With these principles in mind, I will provide my conclusions on causation from inferences I have drawn from the evidence as a whole, including the photographs, videos, and various expert opinions that I have accepted.

a. The Experts' Theories

[387] If there is one thing that is clear, it is that the fields of hydrological, hydrotechnical, stream channel geomorphology, and fluvial sedimentology engineering are highly specialized and complex.

[388] Much of the expert evidence led at trial involved academic debate amongst the experts who were attempting to determine causation with scientific precision. Each expert theorized on what may have happened based on a series of assumed facts that, if true, might explain their version of the events.

[389] Dr. Alila is often requested by scientific publications to peer review and critique other scientists. His job is to ensure that the exacting standards set by particular publications are met. As such, he acts as a gatekeeper for his field. He has high standards and holds his peers to rigorous standards as well.

[390] I am satisfied that Dr. Alila, who is clearly highly qualified in his field, critiqued both Dr. Smith and Mr. LaCas on a standard of scientific precision. He did not agree with the approach they took in using approximations that were necessitated by the unavailability of precise data. He found the use of these approximations to be unacceptable. The rigorous standard of scientific certainty, of course, is not the standard upon which I am to decide this case.

[391] Indeed, none of the experts can say with precision what happened. There are simply too many unknowns and too many variables. Factors such as volume, velocity, depth of the flow, resistance, riprap on the channel banks, and channel dimensions (to name a few) are all at play. To add to the complexity, all of these factors change depending on timeframe and location in the creek channel.

[392] Sicamous Creek is dynamic and ever-changing. It is not a laboratory where controlled testing can be performed. No one knows the state of the creek bed and how much, if any, aggradation existed immediately prior to the 2012 Flood. No one knows precisely the volume or velocity of the flow during the 2012 Flood. In light of these variables, the experts did the only thing they could do: use their expertise,

experience and engineering principles to attempt to “calculate” the results. At best, these attempts were educated guesses.

[393] I was impressed by Dr. Smith’s knowledge of this subject area. He is clearly a very experienced and knowledgeable expert in the area of modelling and simulations. He maintained confidence throughout his testimony that his simulations of the 2012 Flood, while not precise, were approximately correct.

[394] Of all the experts who testified, I am satisfied he knew the Sicamous watershed best.

[395] Attempts to challenge his opinions were not successful and were met with carefully considered, thoughtful and confident responses. There are many, many variables that go into his models and he used his experience and judgment to parameterize and calibrate them.

[396] It is correct that when the number of input parameters increase, more judgment calls need to be made and it is more likely that the model will be inaccurate. The reliability of Dr. Smith’s models to precisely emulate the 2012 Flood is limited but I am persuaded that they are nonetheless helpful in estimating the timing and flow volume of the Sicamous Creek during the 2012 Flood.

[397] I am satisfied that Dr. Smith’s methodology, calibration and parameter range took into account all necessary and relevant variables such that the model is as reliable as was possible in the circumstances.

[398] Additionally and importantly, Dr. Smith’s simulations complement the photographs, videos and witness testimony. They corroborate Mr. Bens’ evidence that the flow peaked at around 6:00 pm on June 23, 2012 and that it stabilized by approximately 9:00 pm. The photographs and videos confirm that, more likely than not, the flows were not “off the charts” after 6:00 pm. as the defendants suggest. Rather, they were probably manageable by the channel, but for the Blockage. I accept that the creek was flowing at a rate of 50-60 cubic metres/second and that the channel was able to handle it, albeit barely.

[399] On balance, and the acknowledged frailties with the data, I find that Dr. Smith's models are a reasonable approximation of the events of the 2012 Flood.

[400] There were two main differences between Dr. Church and Dr. Jakob's opinions related to the causation of Avulsions 'A' and 'D'.

[401] First, Dr. Church says that the flow (and sediment contained within it) would have been flushed into Mara Lake irrespective of its high water and thus, the Blockage caused Avulsion 'A'. Dr. Jakob disagrees and says that the high lake water level is the single most contributory factor to the aggradation eventually occurring and ultimately causing Avulsion 'A'. He says that the channel had already aggradated due to the backwater effect that occurred prior to the Blockage. Dr. Jakob's view is that Avulsion 'A' would have occurred in any event because the channel had almost completely filled in with sediment.

[402] Secondly, Dr. Church says that the avulsions upstream of Avulsion 'A', particularly Avulsion 'D', were also caused by the Blockage because it created a progressive upstream sediment wedge. Dr. Jakob, on the other hand, says that Avulsion 'D' had nothing to do with the Blockage and occurred independent of it.

[403] Dr. Church criticized Dr. Jakob's approach on the basis that his opinion was based on a "how to design the channel for safety" point of view rather than a "what happened" historical point of view. Because of the supercritical flow prior to the Blockage, Dr. Church does not believe the high lake water level would have had the effect Dr. Jakob suggests. Because Sicamous Creek flows through a deep, narrow channel, he believes that it was competent to transport and flush debris even at moderate flows. Therefore, Dr. Church's view is that aggradation would not have occurred but for the Blockage.

[404] Dr. Jakob's opinion is that Avulsion 'D' occurred some 160-170 metres upstream from the Highway 97A Bridge and was caused by two complementary processes that were totally independent of the Blockage. Those processes were: (1) massive bank erosion and consequent channel widening; and (2) a sediment wedge

from the Highway 97A Bridge upstream raising the bed of the channel and reducing stream competence.

[405] Based on a review of the videos of the 2012 Flood, Dr. Church does not accept that most of the sediment material that ended up on the Vinco Property came from Avulsion 'D'. This is firstly because a substantial volume of sediment and rocks were transported over the Vinco Property by Avulsion 'A' and secondly because Avulsion 'D' occurred much later as the flow was receding (meaning the flow would have been mostly water at that point with little to no sediment embedded therein).

[406] It is impossible to know precisely when the sediment began overflowing the bank. I accept that the peak of the flood occurred when Avulsion 'A' became active and Avulsion 'D' had not yet begun. I accept that Avulsion 'D' started well after peak flows. I note as well that Avulsion 'D' started out relatively small and did not fully develop until June 24, 2012 and by then, the sediment being transported by the flow had substantially reduced. I accept that by the time Avulsion 'D' was complete, most of the sediment from the watershed had been spent.

[407] Accordingly, I accept Dr. Church's opinion that the majority of the sediment from the watershed (approximately 25,000 cubic metres) was likely transported onto the Vinco Property via Avulsion 'A'. This view is corroborated by the photographs, videos and eyewitness testimony of the 2012 Flood.

[408] I also accept Dr. Church's opinion that, compared to Avulsion 'A', Avulsion 'D's contribution to the sediment deposit on the lower Vinco Property, excluding the sediment that was flushed through the property into Mara Lake, was much smaller, likely less than 30% of the total.

b. The Cause of the 2012 Flood

[409] The timing of the chain of events is important in determining causation.

[410] Mr. Varszegi (Waterway's dock manager) testified on these points. He was sensible, careful and fair in giving his evidence. He took photographs minutes before

the Truck arrived at the bridge. These photographs are instructive and helpful, especially when compared to the photos of the bridge taken afterwards. He stated, and I accept, that by approximately 3:30 pm on June 23, 2012, he observed Sicamous Creek flowing fast. He heard the sound of rocks crashing in the creek, and saw full-size trees transported down the channel, driven by the force of the flow under the McLaughlin Bridge and flushed into Mara Lake.

[411] He described the flow as an elevated jet of chocolate coloured water being shot into the lake. The jet disappeared abruptly some distance into the lake where it met a large debris mat floating in the lake. At that point, everything was being flushed into the lake.

[412] He noted that between 3:40 pm and 4:45 pm, the level of Sicamous Creek rose about one foot. He noted that by 5:30 pm, the waves were making contact with the underside of the McLaughlin Bridge. Debris was being temporarily captured by the McLaughlin Bridge causing a thin sheet of water upstream to spill over the north bank. With the force of the flow, the captured debris broke free and was forced under the bridge. Following that, the flow resumed.

[413] At approximately 5:48 pm on June 23, 2012, Mr. Varszegi observed the Truck "rafting" down Sicamous Creek nose first. It hit the south bank and spun sideways. He saw it "shuddering" along the bank and roll roof-first, crashing into the McLaughlin Bridge and ultimately disappearing. Immediately thereafter, the creek backed-up and flowed over the north bank onto Mervyn Road and onto the Vinco Property. The overbank flow was dramatic and grew faster and deeper as it expanded upstream (Avulsion 'A').

[414] Within 30 minutes, a large pile of debris had jammed against the upstream side of McLaughlin Bridge which by then was completely blocked. There was no place for the flow to go other than over the channel's banks. Prior to the Blockage, he stated that any overbank flows were minimal and caused by transient blockages.

[415] I have already accepted that peak flow occurred at about 6:00 pm and stabilized at that level through to about 9:30 pm when it began to subside.

[416] I conclude that, more likely than not, the Sicamous Creek channel, as debris laden as it was, was still able to carry the flows into Mara Lake. I conclude that the debris was being flushed into Mara Lake and over the lip of the delta. The videos and photographs speak volumes on this point.

[417] In my view, Dr. Church's theory that the aggradation occurred well after the arrival of the Truck makes the most sense. The flow necessary to move the sediment, full-size trees, and large boulders could not have been a shallow flow as Dr. Jakob opined. I conclude that the sedimentation occurred after the Blockage.

[418] I am satisfied that, but for the Blockage, the flow could have been contained within the channel.

c. The Cause of Avulsions 'A' and 'D'

[419] I am satisfied that at about 5:48 pm, the Truck became jammed under the McLaughlin Bridge which plugged the channel and caused the Blockage, which in turn caused Avulsion 'A'.

[420] Therefore, if there was no Truck, there would have been no Blockage and flooding to the Vinco Property caused by Avulsion 'A' would have been minimal.

[421] While all experts who testified were exceptionally qualified in their fields and were all helpful, as between Dr. Church's and Dr. Jakob's competing theories of the cause of Avulsion 'A', I prefer Dr. Church's theory. With respect to the competing theories of the cause of Avulsion 'D', I prefer Dr. Jakob's theory that it was totally unrelated to the Blockage and was caused by other naturally occurring phenomena.

[422] Therefore, I conclude that the flood damage caused to the Vinco Property was due to a combination of factors, some related to the Blockage and some not. Those factors are:

- a) The height of the McLaughlin Bridge was insufficient to handle a 1 in 200 year debris flood;
- b) The Channel Restoration resulted in the creek channel below the Highway 97A Bridge being shallower and narrower than it was prior to the 1997 Flood;
- c) Avulsion 'A' was predominantly caused by the Blockage. Had the McLaughlin Bridge been higher, the Truck and other debris in the flow would have been flushed into Mara Lake and most of the flooding caused by this avulsion would have been averted; and
- d) Avulsion 'D' started much later than Avulsion 'A' as the volume and flow of the creek reduced after peak flow. Avulsion 'D' occurred independently of the Blockage and the Works.

[423] In sum, I find that significant flooding, damage, erosion and debris deposit on the Vinco Property occurred as a result of Avulsion 'A' which would have made it impossible for Waterway to operate its business in any event of Avulsion 'D'. Avulsion 'D' simply added to the flood debris, but was more confined to the north portion of the property.

XVII. CONCLUSIONS ON LIABILITY

[424] The lead-up to the 2012 Flood was a perfect storm. Mara Lake levels were the highest they had been since the early 1970s. There was significant rainfall on a significant snowpack in the Sicamous Creek watershed. The resulting debris flood was extraordinary.

[425] Here, I am satisfied that both the McLaughlins and the District as approval holders fell short of complying with the conditions in the Approvals. In accordance with s. 21 of the *Water Act*, they are both liable to make full compensation to Vinco and Waterway for damages suffered as a result.

[426] The Province is liable to the plaintiffs due to Mr. Doyle's failure to meet the standard of care of a professional engineer by compromising his professional judgment in allowing the McLaughlin Bridge to be reconstructed at a height that was too low especially after knowing that the Channel Restoration was improperly constructed.

[427] In terms of the specific damage that each defendant is liable for, I conclude as follows:

- a) The Province is liable to the plaintiffs in negligence for damage caused to the Vinco Property and Waterway by Avulsion 'A';
- b) The District is liable under s. 21 of the *Water Act* to Vinco and Waterway for damage caused by Avulsion 'A';
- c) The McLaughlins are liable under s. 21 of the *Water Act* to Vinco and Waterway for damage caused by Avulsion 'A';
- d) Vinco and Waterway are 25% contributorily negligent for the damage caused by Avulsion 'A';
- e) The Province, the District and the McLaughlins were jointly responsible for Avulsion 'A' and the damages caused by them are indivisible; and
- f) The defendants are not liable to the plaintiffs as joint tortfeasors.

XVIII DAMAGES

[428] Waterway was forced to close for three weeks from June 23, 2012 to July 12, 2012. Only due to the extraordinary effort of Waterway's staff was business able to resume when it did, albeit in a rudimentary and makeshift fashion. Sailing reservations for that three week period were cancelled. For those customers who had pre-paid, Waterway gave the option of a full refund or an opportunity to book two future trips for the price of one.

[429] In addition to lost profits, Waterway and Vinco lost most of its infrastructure, including buildings, equipment, inventory, supplies and materials. In addition, it incurred significant clean-up costs.

[430] Waterway also lost profits and management fees from the sale of ancillary goods and services such as water sport rentals and food/dry goods typically sold to houseboat guests before and after sailings.

[431] Waterway and Vinco claim damages in three categories: diminution in property value; business losses; and special damages.

[432] The Individual Houseboat Owners suffered no property damage but lost their share of revenues for the 2012 sailing season when their payments were deferred by Waterway's management (due to the significant reduction in revenues and expenses incurred due to the 2012 Flood). This deferment upset a number of Individual Houseboat Owners who were counting on these funds to pay their own expenses. The result of this dissatisfaction was that six of the houseboats left the Waterway fleet and commenced lawsuits against Waterway.

[433] I have already determined that Avulsion 'A' caused the majority of the damage whereas Avulsion 'D' was responsible for a lesser degree. I have also determined that the Vinco Property would have been damaged to some extent in any event of the Works (albeit minor by comparison). I propose to deal with this issue by way of a percentage reduction to some of Waterway's and Vinco's claims.

[434] The plaintiffs are only entitled to compensation for loss caused by an actionable wrong and therefore, the damages done by Avulsions 'A' and 'D' must be divided: *Blackwater v. Plint*, 2005 SCC 58. The defendants submit, and I agree, that Waterway should not be entitled to a windfall merely because it is difficult to untangle the sources of damage. Although some of the damage was overlapping, I conclude I am still able to make a determination of the damages caused by Avulsion 'A'.

[435] Dr. Jakob prepared a drawing of the avulsions on an aerial photograph of the flood's aftermath. On the drawing, he opined as to where each avulsion started and the route each avulsion took as it exited the existing channel and progressed onto the Vinco Property. I accept this sketch as an approximation of the avulsions' various routes through the Vinco Property, in particular because it dovetails with the photographic and video evidence of the 2012 Flood.

[436] Avulsion 'A' raged across Mervyn Road and onto the lower Vinco Property destroying everything in its path. Specifically, I conclude that Avulsion 'A' caused most if not all of the damage to the southern portion of the Vinco Property (including the administration building, the parking lot and other outbuildings).

[437] Avulsion 'D', although also significant, was more confined to the upper portion of the Vinco Property to the east of Highway 97 near the houseboat docks. Avulsion 'D' occurred later in the evening on June 23 and into June 24, during which time the flow was reducing in volume and strength. The rocks and boulders seen in the photographs strewn throughout the upper parking lot were likely caused by water erosion from Avulsion 'D'. It is unlikely that they were caused by aggradation or transported by the flow itself.

[438] Although imprecise, the percentage of the total damage caused by Avulsion 'A' compared to Avulsion 'D' calls for an assessment. In all the circumstances, I conclude that 80% of the total losses resulted from Avulsion 'A' and 20% resulted from Avulsion 'D'.

a. Measure of Damages in Tort

[439] The object of damages in tort is to put the plaintiffs in the same position they would have been "but for" the defendants' wrongful acts.

[440] Under established Canadian tort law, a defendant is liable if the plaintiff proves – in respect of causation – that the defendant caused the damage. If the defendants prove that some of the plaintiffs' injuries would have occurred regardless of their negligence, the defendants' liability can be reduced: *Deloitte* at para. 95.

[441] To be recoverable, damages must have been reasonably foreseeable consequences of the breach. The principle of remoteness imposes limits on recoverable damages as a matter of fairness. Determining the degree of probability of a reasonable foreseeable consequence requires a remoteness analysis: *Mustapha* at paras. 12-14.

[442] Reasonable foreseeability is to be determined at the time of the tort on a “reasonable person” objective standard: *Milliken v. Rowe*, 2012 BCCA 490 at paras. 24-27. Consequently, I must assess damages based on what was reasonably foreseeable at the time of the Works in 1998.

[443] I have earlier found that the flooding damage to the Beachcomber Campground, as it then was, was a reasonably foreseeable risk. It was also reasonably foreseeable that the Beachcomber Campground would have been sold to a business like Waterway that could be significantly affected by flood damage.

[444] I am satisfied therefore that the plaintiffs are entitled to recover damages because they would have been in the reasonable contemplation of reasonable persons in the defendants’ shoes at the time. Further, they are not too remote.

[445] I have also found that Waterway and Vinco ought to bear some degree of blame for relocating to the Vinco Property despite the warnings in the EBA Reports.

b. Compensation Under s. 21 of the *Water Act*

[446] As “owners” under the *Water Act*, Vinco and Waterway are entitled to claim “full compensation” for their loss and damage resulting from the Approvals.

[447] The plaintiffs assert that the words “full compensation” under s. 21 means *all* losses including consequential economic loss.

[448] Prior to this trial commencing, the defendants brought an application to strike the plaintiffs’ claim. I dismissed the application but my reasons became an issue during submissions prompting me to file a clarifying Corrigendum (cited as 2018

BCSC 606, revised October 17, 2018) stating that neither I nor the drafters of the legislation intended to restrict damage claims to real property.

[449] Repeating from the Corrigendum to Reasons for Judgment dated October 17, 2018, paras. 44-47:

[44] I am in substantial agreement with the plaintiffs' submissions. The *Water Act* is concerned with the regulation of property rights in water and the limited relationship addressed in s. 21. The case law and academic commentary on the "complete code" doctrine emphasize the need for care in defining the scope of a complete code: *Tucci v. Peoples Trust Company*, 2017 BCSC 1525 at paras. 64-68; *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298 at 1315-1320; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014) at 536-539. In particular, there is a need for careful attention to legislative intent as determined by considering all relevant factors, including the text, scheme, object and history of the legislation and the presumption that the legislature does not intend to abrogate common law rights unless it says so explicitly or by necessary implication.

[45] Therefore, in my view, the *Water Act* is a complete code solely with respect to the allocation of property rights in water, and with respect to causes of action between "Owners" and licensees, approval holders and persons who make changes in and about a stream (as defined) in accordance with the regulations, where they cause damage to land, trees, works (as defined) or other property including real property. It is not a comprehensive code that subsumes common law nuisance and negligence claims.

[46] It was not the intention of the Legislature to abrogate those claims.

[47] The impact of this conclusion is that under s. 21 of the *Water Act*, "owners" may only sue approval holders who fail to take reasonable care in making changes in and about a stream for property damage or loss resulting from construction, maintenance, use, operation or failure of the "works" under s. 21 of the *Water Act*. They may sue others for other harms by way of common law causes of action. In particular, the Individual Houseboat Owners who are not "owners" may sue for economic loss. While pure economic loss is generally not recoverable, the plaintiffs plead a quasi-joint venture relationship, one of the exceptions to that rule.

[450] Indeed, the point was reinforced by my summary in para. 66:

[66] . . . (a) "Owners" as defined in the *Water Act* may only pursue causes of action against approval holders where they fail to take reasonable care in making changes in and about a stream or where they suffer damage or loss to property resulting from construction, maintenance, use, operation or failure of their "works", which includes the right to claim under the common law doctrines of nuisance and negligence. Section 21 has not abrogated those

doctrines. Those who are not “owners” or did not suffer damage to property may not pursue a claim under s. 21;

[451] Therefore, I conclude that Waterway and Vinco as “owners” are entitled to claim all losses they have incurred resulting directly or indirectly from Avulsion ‘A’, including physical losses, special damages and economic losses.

c. Diminution of Value of the Vinco Property

[452] Vinco claims for damages not only to its physical structures but for changes to the shape and configuration of the Vinco Property, including the beach and foreshore, thus making it less useful and ultimately less valuable.

[453] The plaintiffs acknowledge the difficulty in assessing damages for diminution in value but argue that on a balance of probabilities, damages can be made out.

[454] This head of damage came down to a debate between the plaintiffs’ appraiser, Mr. Steven Danielson and the defendants’ appraiser, Mr. Carl Nilsen.

i. The Appraisers

[455] The plaintiffs retained Mr. Danielson, a qualified appraiser, to provide an opinion on the diminution in value of the Vinco Property post-2012 Flood.

[456] His appraisal is based on the highest and best use of the Vinco Property, both pre- and post-2012 Flood.

[457] His opinion is that immediately prior to the 2012 Flood, the Vinco Property (land only) had a fair market value of \$7,170,000 and immediately after the 2012 Flood, its value was reduced to \$5,760,000, a difference of \$1,410,000. These calculations were based on the buyer being an “experienced property developer.”

[458] In simple terms, he attributes the diminution in value of \$1,410,000 to the significant change in topography and attractiveness of the property as well as the contamination caused by the 2012 Flood. The contamination relates to the organic matter (trees, root systems, silt and other debris) and non-organic matter (vehicles,

equipment, parts of buildings) that were buried underneath the property to an unknown extent.

[459] In preparing his opinion, Mr. Danielson was not provided with and did not review the EBA Reports that suggested the pre-2012 Flood soil conditions were “fair to poor”. While he agreed, on face value, that poor soil conditions would have had an adverse influence on the property value, he stated that it is common for lakefront properties to have poor soil conditions and that developers generally take this into account when making offers to purchase. He disagreed that the EBA Reports would impact or change his appraisal opinions.

[460] The comparables he used in his appraisal were varied and, although similarly located in a flood plane, were noticeably different than the Vinco Property. He stated that he factored those differences into his final adjustments.

[461] In short, Mr. Danielson’s opinion was that the highest and best use of the Vinco Property in June 2012 was its use as a houseboat business. Anyone buying the Vinco Property at this point would likely be doing so with a plan to “hold onto it” pending a better residential development climate. A development would not have been economically feasible in 2012 due to the poor real estate market but, he says, downturns in the economy are usually temporary and improve at some point.

[462] The most likely potential purchaser for the Vinco Property in 2012 would have been a property developer who, if comparing its pre- and post-flood state, would have applied a discount to the offer due to the unknown risks associated with the contamination and the less attractive visual changes to the property. He says experienced developers are used to risks and uncertainty and simply factor that into the discount. He says that an appropriate discount for the Vinco Property would be 20%, which is the approximate discount he applied to arrive at the post-2012 Flood valuation of \$5,760,000.

[463] The defendants also called evidence on the diminution of value issue. They jointly retained Mr. Nilsen, a property valuator, to prepare a response to Mr. Danielson's appraisal.

[464] The defendants did not ask Mr. Nilsen to express an opinion on the pre-flood value of the Vinco Property or how the 2012 Flood may have affected its value. He was simply asked to critique Mr. Danielson's opinions.

[465] In his view, Mr. Danielson's pre-flood valuation of \$7,170,000 was too high. He did not agree with Mr. Danielson's appraisal methodology nor did he agree with his opinion on the reduction in value of the Vinco Property after the 2012 Flood

[466] In his opinion, the use made by Mr. Danielson of comparables was not valid. While he agrees that some properties, by their nature and location, have limited "apples-to-apples" comparables and that a certain degree of latitude on the part of the appraiser is required, the appraiser must be clear and cautious on how those differences may affect the appraisal. The further away the comparables are, the greater the need for care and caution in the appraisal. In the circumstances of this case, he felt Mr. Danielson was not as cautious as he should have been.

[467] Mr. Nilsen also believed that Mr. Danielson had not fully reflected on market variations for this type of property. He was critical of Mr. Danielson's assumption that there were unknown detrimental soil conditions after the 2012 Flood. He noted that appraisers are not qualified to comment on the cost of remediation of property.

[468] Mr. Nilsen did agree, however, that the most likely purchaser of the Vinco Property in 2012 would have been either a developer who was prepared to hold the property, or someone who wanted to operate a business similar to Waterway's.

[469] He agreed that a prudent buyer would be concerned about unknown soil characteristics and would undertake a due diligence investigation before making an offer. He agreed that when properties contain detrimental conditions, the value is lower: the higher the risk, the lower the offer price. He agreed that these types of risks need to be considered in valuing the property.

ii. Discussion

[470] The appraisal process is not an exact science. It involves looking at available data, adjusting for various factors such as trends in the market and then ultimately applying experience and professional judgment.

[471] The ultimate issue in any appraisal is what a third party buyer would pay considering market conditions and the type of development or use of the property.

[472] I conclude that, reflecting on the 2008 worldwide downturn in the economy, the market for development property such as the Vinco Property was slow in the 2012 timeframe. The most probable buyer, if one could be found, would have been an experienced developer who would have likely held the property for development until the market improved. The fact that the property was waterfront property brings with it a normal risk that is usually factored into the purchase price.

[473] Having weighed Mr. Danielson's opinion against Mr. Nilsen's opinion, I find that I am unable to conclude that the plaintiffs have met the burden of proof. Although I am satisfied that the property looks aesthetically different and that there are unknown risks associated with the land, the takeaway from Mr. Danielson's evidence was that Vinco Property's soil conditions would have been a significant risk for development in any event due to its waterfront location. Given the EBA Reports, I conclude that the risk factors to a developer would have been the same or similar before and after the 2012 Flood and that the 2012 Flood did not have a significant impact on the Vinco Property's value.

[474] It follows that Vinco's claim for diminution in value is dismissed.

d. Pure Economic Loss

[475] With a few exemptions, pure economic loss (a loss that is not accompanied by physical injury or property damage) is not recoverable. One exception is known as "relational economic loss" which allows a plaintiff who suffered no physical damage to claim economic damages because of the relationship he or she has to another person who has suffered physical damage. Some relationships (joint or

common ventures) can support claims for pure economic loss in certain circumstances: *Norsk* at para. 73; *Bow Valley* at paras. 46-48.

[476] In addition to the physical losses, Waterway and Vinco claim economic losses. In addition to the three week period of lost revenues immediately following the flood, Waterway claims that the business suffered ongoing losses in the form of reduced revenues. These losses are known as "consequential economic losses" (not "pure economic losses") and are recoverable because they are consequent from the physical losses they sustained.

[477] The Individual Houseboat Owners did not suffer any physical damage to their houseboats but claim they suffered financial losses. They assert that these losses are "relational economic losses" and as such are an exception to the general rule that economic losses are not recoverable. They say they were engaged in a form of common or joint venture with Waterway.

[478] The joint venture exception was first identified by the Supreme Court of Canada in *Norsk*. Briefly, the facts of *Norsk* were that the defendant caused damage to a bridge owned by the plaintiff. A third party railway company (Canadian National Railway) did not own the bridge but used it regularly. As a result of the damage caused by the defendant, the railway had to reroute its trains which resulted in a loss. The Court found that a joint or common venture existed and that the railway could claim damages for pure economic loss. McLachlin J., as she then was, stated at 1162:

Such a characterization brings the situation into the "joint" or "common venture" category under which recovery for purely economic loss has heretofore been recognized in maritime law cases from the United Kingdom and the United States. The reasoning, as I apprehend it, is that where the plaintiff's operations are so closely allied to the operations of the party suffering physical damage and to its property (which—as damaged—causes the plaintiff's loss) that it can be considered a joint venturer with the owner of the property, the plaintiff can recover its economic loss even though the plaintiff has suffered no physical damage to its own property. To deny recovery in such circumstances would be to deny it to a person who for practical purposes is in the same position as if he or she owned the property physically damaged.

[Citations omitted.]

[479] Continuing at 1164:

... I do not read the authorities which have considered the implications of a joint venture between the plaintiff and the owner of the damaged property as confining themselves to the formal terms of the contract. I prefer a more flexible test which permits the trial judge to consider all factors relevant to their relationship. The terms of the contract are an important consideration in determining whether economic loss is recoverable. But the contract may tell only part of the story between the parties. If the evidence establishes that having regard to the entire relationship between the owner of the damaged property and the plaintiff, the plaintiff must be regarded as standing in the relation of joint or common venturer (or a concept akin thereto) with the property owner with the result that in justice his rights against third parties should be the same as the owner's, then I would not interfere.

[480] In *Bow Valley*, five years after *Norsk*, McLachlin J., as she then was, stated at paras. 45-51:

[45] The foregoing suggests the need for a rule to distinguish between cases where contractual relational economic loss can be recovered and cases where it cannot be recovered. Such a rule, as I wrote in *Canadian National Railway Co. v. Norsk Pacific Steamship Co.*, [1992] 1 S.C.R. 1021, should be morally and economically defensible and provide a logical basis upon which individuals can predicate their conduct and courts can decide future cases (p. 1147). Although this Court attempted to formulate such a rule in *Norsk*, a split decision prevented the emergence of a clear rule. Given the commercial importance of the issue, it is important that the rule be settled. It is therefore necessary for this Court to revisit the issue.

[46] The differences between the reasons of La Forest J. and myself in *Norsk* are of two orders: difference in result and difference in methodology. The difference in result, taken at its narrowest, is a difference in the definition of what constitutes a "joint venture" for the purposes of determining whether recovery for contractual relational economic loss should be allowed. We both agreed that if the plaintiff is in a joint venture with the person whose property is damaged, the plaintiff may claim consequential economic loss related to that property. We parted company because La Forest J. took a stricter view of what constituted a joint venture than I did.

[47] The difference in methodology is not, on close analysis, as great as might be supposed. Broadly put, La Forest J. started from a general exclusionary rule and proceeded to articulate exceptions to that rule where recovery would be permitted. I, by contrast, stressed the two-step test for when recovery would be available, based on the general principles of recovery in tort as set out in *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.), and *Kamloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2: (1) whether the relationship between the plaintiff and defendant was sufficiently proximate to give rise to a *prima facie* duty of care; and (2) whether, if such a *prima facie* duty existed, it was negated for policy reasons and recovery should be denied.

[48] Despite this difference in approach, La Forest J. and I agreed on several important propositions: (1) relational economic loss is recoverable only in special circumstances where the appropriate conditions are met; (2) these circumstances can be defined by reference to categories, which will make the law generally predictable; (3) the categories are not closed. La Forest J. identified the categories of recovery of relational economic loss defined to date as: (1) cases where the claimant has a possessory or proprietary interest in the damaged property; (2) general average cases; and (3) cases where the relationship between the claimant and property owner constitutes a joint venture.

[49] The case at bar does not fall into any of the above three categories. The plaintiffs here had no possessory or proprietary interest in the rig and the case is not one of general averaging. While related contractually, the Court of Appeal correctly held that the plaintiff and the property owner cannot, on any view of the term, be viewed as joint venturers.

[50] However, that is not the end of the matter. The categories of recoverable contractual relational economic loss in tort are not closed. Where a case does not fall within a recognized category the court may go on to consider whether the situation is one where the right to recover contractual relational economic loss should nevertheless be recognized. This is in accordance with *Norsk*, per La Forest J., at p. 1134:

Thus I do not say that the right to recovery in all cases of contractual relational economic loss depends exclusively on the terms of the contract. Rather, I note that such is the tenor of the exclusionary rule and that departures from that rule should be justified on defensible policy grounds. [Emphasis in original.]

[51] More particularly, La Forest J. suggested that the general rule against recovery for policy-based reasons might be relaxed where the deterrent effect of potential liability to the property owner is low, or, despite a degree of indeterminate liability, where the claimant's opportunity to allocate the risk by contract is slight, either because of the type of transaction or an inequality of bargaining power. I agreed with La Forest J. that policy considerations relating to increased costs of processing claims and contractual allocation of the risk are important (p. 1164). I concluded that the test for recovery "should be flexible enough to meet the complexities of commercial reality and to permit the recognition of new situations in which liability ought, in justice, to lie as such situations arise" (p. 1166). It thus appears that new categories of recoverable contractual relational economic loss may be recognized where justified by policy considerations and required by justice. At the same time, courts should not assiduously seek new categories; what is required is a clear rule predicting when recovery is available.

[481] Here, only five of the Individual Houseboat Owners have a contract directly with Waterway. The rest have contracts with Charters, a shell company, and the appointed "sole and exclusive" manager on Waterway's behalf. None of the Individual Houseboat Owners have a contract with Vinco.

[482] The management contracts between the Individual Houseboat Owners and Charters (as Waterway's agent) suggest no joint venture or partnership exists between them. Those agreements all state:

NO PARTNERSHIP: Nothing in this Agreement shall be construed so as to, or shall, constitute a partnership or joint venture between the Manager and the Partnership. In fulfilling its obligations and exercising its rights hereunder, the Manager shall be an independent contractor or the Partnership and shall have the independent direction and control of the management and operation of the Charter Houseboat, subject to specific direction of the Partnership.

[483] The defendants argue that whether or not the Individual Houseboat Owners and Waterway were engaged in a joint venture must be determined by the contracts. The contracts are explicit that no joint venture exists. Indeed, it appears that Waterway went out of its way to ensure the contracts spelled out that they were not engaged in a partnership or joint venture with the Individual Houseboat Owners.

[484] However, despite the wording of the management agreements, this case is a situation where the Individual Houseboat Owners' right to recover relational economic loss should nevertheless be recognized: *Bow Valley* at para. 50. In my view, the evidence establishes that having regard to the entire relationship, the Individual Houseboat Owners must be regarded as being in a common venture with Waterway and Vinco: *Norsk* at 1164. Accordingly, justice requires their claim for economic losses be allowed to the same extent that it is allowed for Waterway.

[485] The reality is that Waterway could not operate without the Individual Houseboat Owners, and vice versa. Indeed, in the Agreed Statement of Facts, the parties agreed that "*at the time of the 2012 Flood, some or all of the Plaintiffs were involved in the business of offering and providing houseboat vacation packages.*" Their relationship is so closely tied together that it would be manifestly unjust to allow Waterway to recover its economic losses to the exclusion of the Individual Houseboat Owners.

e. Past and Future Loss of Profits

[486] Waterway is a seasonal business earning substantially all of its revenues from May to September of each year. At the time of the 2012 Flood, it had 66 houseboats in its fleet that were available for rent.

[487] In addition to revenues from chartering houseboats (the "Charter Revenue"), Waterway earned additional revenues from ancillary services including fuel and propane sales, septic service charges, programs sold with houseboats, food services, a retail shop and general store, water equipment rental, and repairs to third party houseboats (the "Ancillary Revenue").

[488] Generally speaking, the Charter Revenue is pooled within each fleet of houseboats and allocated proportionately among the Individual Houseboat Owners (the "Allocated Payments"). Costs, such as houseboat repairs, renovation work, and management fees are deducted from the Allocated Payments and the Individual Houseboat Owners are paid the balance at the end of the sailing season, usually in October.

[489] Ms. Alice Letang has been employed with Waterway since 1992 and since 2011 has been its chief financial officer. Prior to that she worked as its financial controller.

[490] Ms. Letang is responsible for all of Waterway's financial record-keeping and is very familiar with it. She testified about Waterway's and Vinco's combined financial position including reservation history, cancellation, and debts owing to investors and trades. She has prepared annual budgets for the past 20 years. She monitors houseboat reservations and uses available information to prepare each year's budget. She has done an admirable job over the years. Her revenue budget numbers usually come remarkably close to the actual numbers for each year, save for the 2012 sailing season when she was below budget revenues of some \$1.4M.

[491] Waterway had insurance coverage for the buildings and some infrastructure lost in the 2012 Flood and received \$927,421.83 in insurance proceeds. That money

was used to pay Vinco's operating loans that were incurred during the clean-up from the 2012 Flood and to pay various contractors hired to replace infrastructure so that Waterway could reopen as quickly as it did.

[492] Waterway had received \$798,917.37 in prepaid guest bookings for the three weeks it was forced to close. Refunds of those bookings commenced in early July 2012 and totalled \$619,013.08. Rebooking proceeds valued at \$179,917.37 were kept by Waterway.

[493] Ms. Letang explained how the Allocated Payments work. She prepared payout spreadsheets explaining how payments are made to the Individual Houseboat Owners in accordance with their various management agreements. These spreadsheets start in 2002 and continue onward. Most houseboats in the fleet split the revenue by 55/45, while four boats split the revenue 60/40. This means that Waterway takes either 55% or 60% of the revenues respectively. The Individual Houseboat Owners then pay for insurance, radio, satellite, renovations, park permits, sewer, internet, upgrades and other charges.

[494] The decision to withhold the Allocated Payments for the 2012 sailing season from the Individual Houseboat Owners was made by Mr. Vinje. Ms. Letang was never directed to make even partial payments. Her understanding of Mr. Vinje's rationale was that there was simply no money available – the business' lines of credit had been run up and Mr. Vinje had already made a significant personal infusion of capital (\$491,000) to help defray the 2012 Flood expenses.

[495] Additionally, if Waterway had any hope of being prepared for the 2013 sailing season, any available financial resources had to be held in reserve pending future reservations and consequent cash flow. Mr. Vinje's decision was that a deferral of payments was the least of two evils. Ms. Letang's evidence confirms that by February 2013, Waterway was experiencing severe cash shortages and significant debts that were threatening its continued ability to operate.

[496] After Waterway's management made the decision to defer the Allocated Payments for the 2012 sailing season, six houseboats left the Waterway fleet, thus impacting revenues available to Waterway in subsequent years.

[497] The parties attempted to estimate the financial impact to Waterway's business by comparing pre-flood revenues and estimated projected revenues to the actual revenues. It was a difficult, time-consuming and imprecise exercise. The plaintiffs retained Mr. Don Spence to prepare an opinion on the past and future loss of income under two scenarios and based on certain assumptions. The defendants retained Ms. Rosanne Walters to critique Mr. Spence's methodology and provide alternative calculations based on different assumptions.

i. The Business Evaluators

[498] Mr. Spence is a chartered professional accountant and business valuator.

[499] He prepared two reports. The first is dated July 28, 2016 ("First Spence Report") and the second is dated February 13, 2018 ("Second Spence Report"). The Second Spence Report was intended to update his opinion, correct errors in the First Spence Report, and reflect more current financial information including the 2017 sailing season.

[500] Mr. Spence made a series of assumptions upon which he relied to base his opinions. These assumptions included that:

- a) Waterway experienced ongoing negative publicity related to the 2012 Flood which resulted in decreased revenues through fiscal 2019;
- b) By May 31, 2012, Waterway's pre-booked houseboat sailings for the 2012 sailing season were 85% of its total revenues for the year;
- c) Six houseboats left the Waterway fleet after the 2012 sailing season as a result of management's inability to pay the Individual Houseboat Owners their Allocated Payments;

- d) Absent the 2012 Flood, Waterway's annual Charter Revenue would have increased by 4% for each of 2014 and 2015. For the years 2016-2020, it would have increased with inflation;
- e) The Ancillary Revenue, fuel sales and variable costs would have increased proportionate to Charter Revenue;
- f) Waterway continued to experience a loss of Charter Revenue and Ancillary Revenue due to the 2012 Flood through fiscal 2019; and
- g) Waterway's houseboat utilization rate would have been the same in any event of the 2012 Flood.

[501] Mr. Spence was asked to quantify past and future business losses under two scenarios: firstly, assuming that the six houseboats that left Waterway's fleet after the 2012 Flood would have remained in the fleet indefinitely but for the flood; secondly, assuming that those same six houseboats would have left the fleet in any event of the 2012 Flood before the start of the 2015 sailing season.

[502] His updated calculations of the losses under these two scenarios are:

Scenario One		Allocated To:	
	<u>Total</u>	<u>Waterway</u>	<u>Continuing Houseboat Owners</u>
Past Loss	<u>\$5,172,000</u>	<u>\$3,529,000</u>	<u>\$1,643,000</u>
Future Loss			
Continuing Houseboats	740,000	460,000	280,000
Lost Houseboats	<u>1,410,000</u>	<u>1,410,000</u>	----
Loss	<u>\$7,322,000</u>	<u>\$5,399,000</u>	<u>\$1,923,000</u>

Scenario Two		Allocated To:	
	<u>Total</u>	<u>Waterway</u>	<u>Continuing Houseboat Owners</u>
Past Loss	\$4,772,000	\$3,129,000	\$1,643,000
Future Loss			

Continuing Houseboats	<u>740,000</u>	<u>460,000</u>	<u>280,000</u>
Loss	\$5,512,000	\$3,589,000	\$1,923,000

[503] His approach considered the 2008/2009 economic downturn, which had a negative effect on Waterway's revenues. He made a series of assumptions regarding when Waterway would have recovered from that downturn had the 2012 Flood not occurred. He assumed Waterway would have recovered to its pre-2008 recession levels by the 2014 sailing season but for the 2012 Flood.

[504] Taking an average of earnings per boat from the 2007, 2008 and 2009 sailing seasons, he estimated that each boat earned an average of \$69,900 each year. He took the average of those three years because they showed a steady revenue growth trend continuing from 2004 until the recession hit in 2008. Because he was attempting to project the normal level of Waterway's business recovery following the 2008 recession, he thought it inappropriate to use the three years immediately preceding the 2008 recession to assess Waterway's losses.

[505] His opinion is therefore based on "revenues-per-boat", assuming the average "revenue-per-boat" in 2015 was the same as it was pre-2008. He assumed that but for the 2012 Flood, Waterway would have had 66 houseboats in the fleet through the 2019 sailing season.

[506] Had he used the three years prior to the 2012 Flood as his baseline, he agrees that his findings would be that Waterway had recovered to its pre-flood revenues by 2015. However, in his view, the effect of the 2008 recession on Waterway's pre-2012 Flood revenues had to be considered in assessing the overall loss.

[507] Once he had the baseline per-boat revenue calculation, he multiplied it by the number of boats in the fleet (66) to get gross revenues of \$4.614M. He then added an assumed annual growth rate of 4%.

[508] The point of his report is that Waterway was clawing its way out of the 2008 recession and in the process was impacted by the 2012 Flood. If the 2012 Flood had not happened, Waterway would have clawed its way back to the pre-recession revenues by 2015.

[509] Because of the lack of reliable economic data in the Sicamous area post-2008 recession, he factored mostly macroeconomic indicators into his assessment.

[510] He concluded that by the 2019 sailing season, Waterway's losses resulting from the 2012 Flood would have ended.

[511] The defendants jointly called Ms. Walters as an expert. She is also an accountant and chartered business valuator with experience in economic loss quantification.

[512] She prepared a response report to Mr. Spence's report and prepared alternative calculations of Waterway's estimated business losses.

[513] While Ms. Walters does not dispute that Waterway suffered financial losses from the 2012 Flood, she believes it recovered from the effects of the flood by the end of fiscal 2015 (2014 sailing season).

[514] For a variety of reasons, she disagrees with Mr. Spence's methodology and approach. For example, she notes that:

- a) Mr. Spence did not consider the fact that Waterway's houseboat fleet was declining in size prior to the 2012 Flood, which would have resulted in lower overall revenues after the flood;
- b) Mr. Spence did not consider the fact that revenues for the six non-continuing houseboats were historically significantly lower than the continuing houseboats;

- c) Mr. Spence did not take into account Waterway's erratic revenue levels prior to the 2012 Flood and did not justify his assumption that revenues would have steadily grown in the years after the flood;
- d) Mr. Spence's use of an 85% advanced booking ratio for the 2013 fiscal year was speculative and not justified based on historical data;
- e) Mr. Spence's assumed annual growth rate of 4% between 2013 and 2015 was too aggressive. An annual growth rate of 2% would have been more appropriate;
- f) Mr. Spence omitted the consideration of insurance cost savings by not having to insure the non-continuing houseboats that left the fleet after the 2012 Flood;
- g) Mr. Spence failed to include customer promotion, customer appreciation and houseboat cleaning costs in his variable cost calculations resulting in his variable costs being too low;
- h) Mr. Spence assumed that the six houseboats left because Waterway had no option but to defer the Allocated Payments due to insufficient financial resources. Ms. Walters' review of Waterway's and Vinco's financial statements disclose that, to the contrary, they had the financial wherewithal to pay the Allocated Payments either partly or in full. It would have therefore been possible to appease the Individual Houseboat Owners and perhaps houseboats would not have left the fleet. In other words, Ms. Walters believes that the departure of the six houseboats after the 2012 Flood was due to Waterway's and/or Vinco's own making.

[515] In her opinion, the net effect of these shortcomings is that Mr. Spence's projected losses are grossly exaggerated.

[516] She does not believe Waterway's pre-2008 recession years are relevant to the projected losses from the 2012 Flood because at that time the Waterway fleet

was growing and the economy was booming. The pre-recession economy was different. Economic and industrial factors in the two years post-2008 recession and pre-2012 Flood (namely, 2010 and 2011) would, in her view, more closely reflect what would have happened but for the 2012 Flood.

[517] Her point is that the pre-2008 recession steep growth period is not indicative of what would have happened coming out of the recession. Further, she points out that there was also a post-2012 recession in Alberta, a key source of Waterway's business and a factor that Mr. Spence failed to consider.

[518] She also criticized Mr. Spence for using Sunshine Houseboats (a houseboat business located in the Kootenays) as a guide. In her view, Sunshine Houseboats is not a comparable business because it is located in a different market with a number of different economic factors and indicators.

[519] Ms. Walters calculated losses related to the 2012 Flood based on four scenarios as follows:

- a) Scenario #1 – Revenue streams had returned to “without flood” levels by the end of fiscal 2015. Loss to Waterway: \$921,376; loss to Individual Houseboat Owners: \$391,221; total loss: \$1,312,597.
- b) Scenario #2 – Revenue streams respecting the continuing houseboats had returned to “without flood” levels by the end of fiscal 2015 but the non-continuing houseboat revenue loss continued through the end of fiscal 2015. Loss to Waterway: \$1,105,215; loss to Individual Houseboat Owners: \$391,221; total loss: \$1,496,436.
- c) Scenario #3 – Revenue streams respecting the continuing houseboats had returned to “without flood” levels by the end of fiscal 2015 but the non-continuing houseboat revenue loss continued through the end of fiscal 2016. Loss to Waterway: \$1,291,229; loss to Individual Houseboat Owners: \$391,221; total loss: \$1,682,450.

- d) Scenario #4 – Revenue streams respecting the continuing houseboats had returned to “without flood” levels by the end of fiscal 2015 but the non-continuing houseboat revenue loss continued through the end of fiscal 2017. Loss to Waterway: \$1,478,832; loss to Individual Houseboat Owners: \$391,221; total loss: \$1,870,053.

[520] Projecting loss of revenues from the non-continuing houseboats into the end of fiscal 2020 (assuming it can be attributed to the 2012 Flood), she calculates an additional loss of \$576,419 to Waterway.

[521] Because Ms. Walters determined that lost revenues for the continuing houseboats would have ended at the end of fiscal 2015, she did not calculate any future losses from that point on for those houseboats.

[522] She also noted that the decreased revenues that Waterway experienced were in part related to the reduction in the overall size of its fleet prior to the 2012 Flood. She separated out the revenues per houseboat for the continuing houseboats and the non-continuing houseboats and noted that the average revenues for the non-continuing houseboats were significantly lower than the continuing houseboats. The average revenue per continuing houseboat, while dropping in fiscal 2013 (2012 sailing season), rebounded to their pre-flood levels by the end of fiscal 2015.

ii. Discussion

[523] The nature of Waterway’s business makes it extremely difficult to predict what business would have looked like but for the 2012 Flood. There are simply too many economic factors and other unknowns to say with precision what the financial impact of the 2012 Flood was. An assessment of past and future loss of earnings is therefore required.

[524] I have considered both Mr. Spence’s opinions and Ms. Walter’s critique. On balance, I prefer Ms. Walters’ analysis over Mr. Spence’s. Based on her analysis, I conclude the average revenue per continuing houseboat recovered to the levels they would have been, but for the 2012 Flood, by the end of fiscal 2015.

[525] Taking everything into account, I conclude that Waterway's revenue losses likely continued through the 2014 sailing season. However, I find that by the 2015 sailing season, Waterway had likely recovered to its "without flood" revenues.

[526] I also conclude that the reason the non-continuing houseboats left the fleet was directly due to Waterway's management decision to defer payment of the Allocated Payments. I find, however, that Waterway had valid business reasons for doing so and that its losses from those six houseboats leaving the fleet are recoverable. Further, I am prepared to accept that had the six houseboats remained with the fleet, Waterway would have enjoyed revenues from them through the end of fiscal 2017.

[527] Accordingly, I find that Waterway has proven damages for loss of profits caused by the 2012 Flood as follows:

Economic Loss for Waterway and Vinco	
Loss of income from continuing houseboats through fiscal 2015	\$735,319
Loss of income from non-continuing houseboats through fiscal 2017	\$743,513
Total gross loss of earnings	\$1,478,832
25% deducted for Waterway's contributory negligence	\$1,109,124
20% deducted for Avulsion 'D'	\$887,299
Total net loss of earnings	\$887,299

[528] I also accept Ms. Walters' opinion regarding losses to the Individual Houseboat Owners. They have proven loss of earnings as follows:

Economic Loss for Individual Houseboat Owners	
Total gross loss of earnings (as set out by Ms. Walters)	\$391,221

20% deducted for Avulsion 'D'	\$312,997
Total net loss of earnings	\$312,997

[529] Therefore, Waterway and Vinco are awarded net damages for economic loss of \$887,299 and the Individual Houseboat Owners are awarded net damages for economic loss of \$312,997.

f. Special Damages

[530] At the outset of the trial, the parties filed an agreement on special damages ("Damages Agreement"). The Damages Agreement is that Waterway and Vinco incurred special damages totaling \$1,771,288.24. Of that, the parties have agreed that the maximum recoverable special damages by the plaintiffs, subject to the plaintiffs proving liability and causation, is 90% or \$1,594,159.42.

[531] Based on the Damages Agreement and on my previous findings, the plaintiffs' claimable losses are restricted to damages caused by Avulsion 'A'.

[532] It is virtually impossible to say with precision what portion of the creek went where or what damage was caused by Avulsion 'A' (as opposed to Avulsion 'D'). Accordingly, an assessment is also required on this head of damage.

[533] An affidavit sworn by Ms. Letang (Waterway's CFO) was filed in evidence. Ms. Letang's affidavit contains a series of detailed spreadsheets she prepared particularizing the losses and expenses that Waterway and Vinco suffered as a result of the 2012 Flood. She sorted the losses into 31 different loss categories ("Loss Categories"). She also helpfully indicated the approximate physical location of each loss category on an aerial photograph ("Loss Category Map"). This became the basis for Waterway's and Vinco's claim for special damages. Her evidence provides the ability to approximate what damages were caused by Avulsion 'A' and what damages were caused by other sources.

[534] Using a combination of the Loss Category Map and Mr. Jakob's avulsion map, I am able to assess the locations of the various loss categories and determine whether they were likely caused by Avulsion 'A' or 'D'.

[535] With that approach, I have determined that Waterway and Vinco have proven that Avulsion 'A' was responsible for the following Loss Categories in the following amounts:

<u>Category No. from Ms. Letang's Affidavit, Exh. 17</u>	<u>Loss Category</u>	<u>Amount Claimed</u>	<u>Amount Awarded</u>
1.	Guest Services Temporary Building	\$36,756.12	0.00
2.	Guest Services Contents	\$25,456.33	0.00
3.	Orientation Building	\$7,054.30	0.00
4.	Administration and Shop	\$196,337.38	\$196,337.38
5.	Administration Contents	\$3,594.52	\$3,594.52
6.	BBQ Shack	\$5,633.34	0.00
7.	Stock	\$51,322.39	\$51,322.39
8.	Tools, Etc.	\$105,992.24	\$105,992.24
9.	Staff Tools	\$3,221.83	\$3,221.83
10.	Septic Pump Outs and Rentals	\$11,396.09	\$11,396.09
11.	Washroom Building	\$34,885.72	\$34,885.72
12.	Fuel Storage	\$48,359.99	\$48,359.99
13.	Electrical Building A	\$26,690.56	\$26,690.56
14.	Electrical Building B	\$6,568.12	0.00
15.	Boat Lift	\$1,604.00	\$1,604.00
16.	Signage	\$23,310.02	\$15,541.00
17.	Parking Lot Set Up/Landscape	\$139,519.85	\$139,519.85
18.	Upper Parking Lot	\$11,252.81	0.00
19.	Docks	\$13,252.77	\$6,626.00
20.	Houseboats	\$1,530.65	\$765.00
21.	Breakwater	\$11,068.34	0.00
22.	Boat Ramp	\$57,158.67	\$57,158.67
23.	Sewer	\$67,678.67	\$67,678.67
24.	Relocation	\$222,117.77	\$222,117.77
25.	Water To Staff Accommodations	\$22,140.27	0.00

<u>Category No. from Ms. Letang's Affidavit, Exh. 17</u>	<u>Loss Category</u>	<u>Amount Claimed</u>	<u>Amount Awarded</u>
26.	2004 U Built Trailer	\$3,275.74	\$3,275.74
27.	Billboard	\$1,160.00	\$1,160.00
28.	Land	\$260,662.23	\$260,662.23
29.	Guests	\$341.68	\$341.68
30.	Dredging	\$40,936.38	\$32,749.00
31.	Other	<u>\$331,009.48</u>	<u>\$264,800.00</u>
	Total	\$1,771,288.26	\$1,555,800.33

[536] I conclude that Waterway and Vinco have not proven that any of Loss Categories 1, 2, 3, 6, 14, 18, 21 and 25 were caused by Avulsion 'A'. Those were either caused by Avulsion 'D' or, in the case of the "Breakwater" (Loss Category 21), would have occurred in any event of the Works. Respecting Loss Categories 16, 19 and 20, I have assigned a percentage that I consider represents the damage caused by Avulsion 'A' (respectively, 66.67%, 50%, and 50%).

[537] Respecting Loss Categories 30 and 31, an assessment of how much ought to be assigned to Avulsion 'A' needs to be made and I have assessed that percentage at 80%. To be clear, "Other" (Loss Category 31) refers to inventory, professional fees, extra wages paid to employees and the book value of miscellaneous capital assets that were damaged or lost as a result of the 2012 Flood.

[538] Waterway and Vinco are therefore awarded special damages of \$1,555,800.33 less 25% for contributory negligence, for a total of \$1,166,850.

XIX. THE NEGLIGENCE ACT AND THIRD PARTY NOTICES

[539] The *Negligence Act*, R.S.B.C. 1996, c. 333, sets out how damages are to be apportioned in cases where two or more persons are at fault. The relevant sections are:

Apportionment of liability for damages

1(1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

(3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

Awarding of damages

2 The awarding of damage or loss in every action to which section 1 applies is governed by the following rules:

(a) the damage or loss, if any, sustained by each person must be ascertained and expressed in dollars;

(b) the degree to which each person was at fault must be ascertained and expressed as a percentage of the total fault;

(c) as between each person who has sustained damage or loss and each other person who is liable to make good the damage or loss, the person sustaining the damage or loss is entitled to recover from that other person the percentage of the damage or loss sustained that corresponds to the degree of fault of that other person;

(d) as between 2 persons each of whom has sustained damage or loss and is entitled to recover a percentage of it from the other, the amounts to which they are respectively entitled must be set off one against the other, and if either person is entitled to a greater amount than the other, the person is entitled to judgment against that other for the excess.

Liability and right of contribution

4(1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.

(2) Except as provided in section 5 if 2 or more persons are found at fault

(a) they are jointly and severally liable to the person suffering the damage or loss, and

(b) as between themselves, in the absence of a contract express or implied, they are liable to contribute to and indemnify each other in the degree to which they are respectively found to have been at fault.

[540] I have found that the Province is at fault for breaching its duty of care to the plaintiffs. I have found the District and the McLaughlins are each at fault under s. 21 of the *Water Act*. I have found Waterway and Vinco are 25% at fault for locating their

operations on the Vinco Property without taking into account the potential for a debris flood and without any flood mitigation measures being considered.

[541] I conclude that the *Negligence Act* is not restricted to negligence claims and applies to claims under s. 21 of the *Water Act*. In the circumstances of this case, I cannot conclude that one defendant was more blameworthy than the other, nor can I determine whose actions were responsible for what damages. Accordingly, I conclude that each of the defendants should bear an equal share of the damages. This means that the Province, the District and the McLaughlins are each severally liable to the plaintiffs to pay 25% of the damages I have awarded.

[542] Given my findings, the Third Party Notices filed by the defendants against each other are moot and are dismissed

XX. SUMMARY OF DECISION

[543] To summarize:

- a) Waterway and Vinco are awarded damages for economic loss in the amount of \$887,299 and special damages in the amount of \$1,166,850.
- b) The Individual Houseboat Owners are awarded damages for lost profits in the amount of \$312,997.

[544] These awards are net of the reduction I have made of 25% for contributory negligence on the part of Waterway and Vinco.

[545] Because of my finding of contributory negligence on the part of Vinco and Waterway, their damage claim is several pursuant to ss. 1 and 2(c) of the *Negligence Act*. Each defendant pays \$684,716 to Vinco and Waterway.

[546] The Individual Houseboat Owners are awarded damages in the amount of \$312,997 jointly and severally against the defendants.

XXI. FINAL COMMENTS

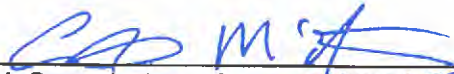
[547] I wish to thank counsel for the hard work and civility both before and during the trial, without which this complex and technically challenging case would have taken much longer. I also wish to thank them for their detailed and thoughtful submissions.

XXII. COSTS

[548] The parties are at liberty to speak to costs.

“G.P. Weatherill J.”

This is **Exhibit "W"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'C. M. S.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

WATERWAY HOUSEBOATS LTD

13 Week Cash Flow Projection - DRAFT FOR DISCUSSION PURPOSES ONLY

Date: For the period April 28, 2019 to July 27, 2019

	Apr 28 - May 04	May 05 - 11	May 12 - 18	May 19 - 25	May 26 - Jun 01	Jun 02 - 08	Jun 09 - 15	Jun 16 - 22	Jun 23 - 29	Jun 30 - Jul 06	Jul 07 - 13	Jul 14 - 20	Jul 21 - 27	Total
Cash Inflows:														
Houseboat Rental - Estimated Deposits (ret)	\$ 224,083	\$ 275,000	\$ 285,000	\$ 275,000	\$ 250,000	\$ 200,000	\$ 120,000	\$ 100,000	\$ 110,000	\$ 100,000	\$ 75,000	\$ 60,000	\$ 100,000	\$ 2,172,683
Transfer in from Vinco	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,200
Transfer in from BCCR	\$ 15,000	\$ -	\$ -	\$ -	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ 2,100	\$ -	\$ -	\$ -	\$ 40,000
Payments on A/R	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Income	\$ 8,587	\$ 2,989	\$ -	\$ 637,977	\$ 9,585	\$ -	\$ -	\$ -	\$ 7,189	\$ 102,100	\$ 75,000	\$ 60,000	\$ 2,820	\$ 689,307
Total Cash Inflows	\$ 252,670	\$ 278,989	\$ 285,000	\$ 912,977	\$ 274,585	\$ 200,000	\$ 120,000	\$ 100,000	\$ 117,189	\$ 102,100	\$ 75,000	\$ 60,000	\$ 102,820	\$ 2,896,190
Cash Outflows:														
Bucc Burch Lease / Joop Lease	\$ 970	\$ -	\$ -	\$ -	\$ 515	\$ 456	\$ -	\$ -	\$ 515	\$ 456	\$ -	\$ -	\$ -	\$ 2,411
Bank / Credit Card Fees	\$ 141	\$ -	\$ -	\$ -	\$ 51	\$ -	\$ 57	\$ 45	\$ -	\$ 51	\$ -	\$ 102	\$ -	\$ 549
Employee Benefits & MSP	\$ 3,834	\$ 413	\$ 413	\$ 413	\$ 3,885	\$ -	\$ 413	\$ 57,240	\$ -	\$ 3,885	\$ -	\$ 413	\$ -	\$ 12,802
Payroll	\$ 43,200	\$ 13,552	\$ -	\$ 57,240	\$ 16,800	\$ -	\$ 21,000	\$ 11,010	\$ 21,000	\$ 72,000	\$ 25,000	\$ -	\$ 25,000	\$ 357,840
Payroll Remittance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 122,352
Utilities - Telus/Hydro/Bell/Mascon	\$ 840	\$ 3,275	\$ 3,275	\$ 204	\$ 4,400	\$ -	\$ -	\$ -	\$ 204	\$ 9,051	\$ -	\$ 4,810	\$ -	\$ 19,890
Shop / Building Expenses	\$ -	\$ 3,686	\$ 5,653	\$ 2,031	\$ -	\$ -	\$ -	\$ -	\$ 204	\$ 9,051	\$ -	\$ 3,619	\$ 204	\$ 34,260
Office / Computer Expense	\$ 323	\$ 6,682	\$ 1,000	\$ 2,031	\$ 10,000	\$ -	\$ -	\$ 5,000	\$ -	\$ 28,000	\$ -	\$ 14,000	\$ -	\$ 71,024
Marketing	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 66,007
Credit Cards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,000
Professional Fees - Fleet Litigation	\$ -	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 15,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 20,000	\$ 80,000
Professional Fees - Legal, Appraisal and Financial Advisory	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,400
Professional Fees - Course of Business	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 595,513
Cost of Houseboat Salings - Parts/Supplies/Fuel	\$ 3,017	\$ 22,896	\$ 24,073	\$ 23,000	\$ 35,344	\$ 15,000	\$ 12,000	\$ 30,000	\$ 15,000	\$ 175,000	\$ 20,000	\$ 187,480	\$ -	\$ 17,513
Bank of Scotia - Annual Server Fee	\$ -	\$ 82,557	\$ -	\$ 26,647	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,400
BFL - INSURANCE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,028
Royal Can Mains S&R - Lifboat 1	\$ -	\$ 13,000	\$ -	\$ -	\$ 8,850	\$ -	\$ 8,850	\$ -	\$ 8,850	\$ -	\$ -	\$ -	\$ -	\$ 4,889
Silverlip - Park Permits	\$ -	\$ 8,850	\$ -	\$ -	\$ 2,472	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PST - Current	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PST - Amarets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
WCB - Current	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
WCB - Amarets including interest and penalty	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GST - Current	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GST - Amarets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Purchase Assets/Uniforms/Traffic/Pumps	\$ -	\$ 3,500	\$ 5,000	\$ -	\$ 325,000	\$ -	\$ -	\$ -	\$ -	\$ 9,000	\$ -	\$ 1,000	\$ -	\$ 12,500
2018 Investor Payout	\$ -	\$ -	\$ -	\$ -	\$ 312,977	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 325,000
Court Judgement - Investors	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Transfer to Vinco	\$ 215,980	\$ 99,775	\$ 65,000	\$ 52,900	\$ 199,837	\$ 135,000	\$ 50,000	\$ 51,787	\$ 287,497	\$ 91,275	\$ -	\$ 400	\$ 5,550	\$ 312,977
Provision Disbursements	\$ -	\$ 25,248	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,213,360
Subst on Outstanding AP	\$ -	\$ 1,313	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,248
Total Cash Outflows	\$ 236,322	\$ 271,171	\$ 170,896	\$ 177,068	\$ 806,240	\$ 234,481	\$ 102,320	\$ 150,082	\$ 344,874	\$ 527,051	\$ 56,000	\$ 323,013	\$ 58,453	\$ 3,562,178
Cash Surplus / (Deficit)	\$ 24,348	\$ 7,798	\$ 94,101	\$ 735,909	\$ (631,655)	\$ (134,481)	\$ 17,680	\$ (50,082)	\$ (207,505)	\$ (424,951)	\$ 20,000	\$ (258,013)	\$ 43,167	\$ (666,598)
Opening Cash Balance	\$ 91,599	\$ 115,947	\$ 123,746	\$ 217,847	\$ 953,756	\$ 322,095	\$ 289,714	\$ 307,394	\$ 252,312	\$ 44,808	\$ (380,143)	\$ (380,143)	\$ (618,156)	\$ 91,599
Closing Cash Balance	\$ 115,947	\$ 123,746	\$ 217,847	\$ 953,756	\$ 322,095	\$ 289,714	\$ 307,394	\$ 322,312	\$ 44,808	\$ (380,143)	\$ (380,143)	\$ (618,156)	\$ (618,156)	\$ (574,990)

Notes:

1. Estimated rental deposits are based on bookings received for the 2019 season and are net of credit card processing fees.
2. Funds transferred from Vinco to support WHL operations.
3. Week 4 - Court Judgement \$312,977 for the Investors and \$325,000 as per Forbearance Agreement
4. Leases are for a staff motor cycle (being repaid by payroll deductions) and for a 2016 Joop Cinerock (Scotiabank lease)
5. Shop / Building expenses include supplies, parts, consumables, rent, etc.
6. Marketing expenses include costs for website maintenance, on-line marketing and advertising.
7. Estimated Professional fees for financial and legal advisory
8. Cost of Houseboat salings include Houseboat repair parts, supplies to clean & stock the boats, propane, retail items, Travel Agent Commission
9. No GST is charged / collected on deposit payments.
10. Week 5 paying based on Forbearance Agreement
11. Paying Court Judgement amount to the Investors
12. Record payment of bills for Vinco Holdings and transfer of funds to Vinco as per Forbearance Agreement.
13. Funding Agreements and payments on Outstanding AP deemed necessary in order to Operate in the 2019 Season
14. Outstanding AP balances as of April 28, 2019 are as follows:

- outstanding AP - Inva	\$ 236,852
- outstanding AP - due in litigation	\$ 358,644
- outstanding AP - 2018 investor payout	\$ 623,724
- outstanding AP - 2017 investor payout	\$ 775,026
TOTAL outstanding AP	\$ 2,034,276

WATERWAY HOUSEBOATS LTD
Monthly Cash Flow Projection - DRAFT FOR DISCUSSION PURPOSES ONLY
July 28, 2019 to July 31, 2020

Note	July 28 - 31	August	September	October	November	December	January	February	March	April	May	June	July	Total
Cash Inflows:														
Houseboat Deposits and Rentals (net)	\$ 50,000	\$ 315,000	\$ 140,000	\$ 49,000	\$ 40,000	\$ 38,000	\$ 100,000	\$ 210,000	\$ 450,000	\$ 930,000	\$ 1,300,000	\$ 965,000	\$ 425,000	\$ 4,612,000
Transfer in from BCCRVINCO	\$ -	\$ 2,100	\$ 2,100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,200
Other Income	\$ -	\$ 70	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 170	\$ -	\$ -	\$ 9,585	\$ 7,169	\$ 2,620	\$ 19,614
Total Cash Inflows	\$ 50,000	\$ 317,170	\$ 142,100	\$ 49,000	\$ 40,000	\$ 38,000	\$ 100,000	\$ 210,170	\$ 450,000	\$ 930,000	\$ 1,309,585	\$ 972,169	\$ 427,620	\$ 4,635,814
Cash Outflows:														
Blue Birch Lease / Jeep Lease	\$ 515	\$ 970	\$ 870	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 970	\$ 12,157
Bank / Credit Card Fees	\$ 51	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 153	\$ 1,887
Employee Benefits & MSP	\$ -	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 4,278	\$ 51,335
Payroll	\$ -	\$ 215,000	\$ 130,000	\$ 86,000	\$ 41,000	\$ 36,000	\$ 50,000	\$ 36,000	\$ 37,000	\$ 60,000	\$ 104,000	\$ 113,400	\$ 144,000	\$ 1,052,400
Utilities - Telex/Hydro/Bell/Mason	\$ -	\$ 50,000	\$ 73,000	\$ 30,000	\$ 19,000	\$ 12,000	\$ 14,000	\$ 25,000	\$ 17,500	\$ 19,000	\$ 40,000	\$ 42,000	\$ 50,000	\$ 381,500
Shop / Building Expenses	\$ -	\$ 10,310	\$ 4,810	\$ 10,810	\$ 4,910	\$ 11,710	\$ 4,710	\$ 15,000	\$ 5,110	\$ 12,000	\$ 4,910	\$ 11,010	\$ 4,810	\$ 100,100
Office / Computer Expense	\$ -	\$ 9,332	\$ 12,079	\$ 7,577	\$ 3,724	\$ 3,427	\$ 3,514	\$ 3,500	\$ 2,500	\$ 2,000	\$ 5,000	\$ 22,395	\$ 8,590	\$ 83,637
Marketing	\$ -	\$ 4,011	\$ 2,652	\$ 3,832	\$ 2,911	\$ 5,205	\$ 2,345	\$ 1,200	\$ 3,500	\$ 5,000	\$ 15,000	\$ 9,765	\$ 3,823	\$ 56,634
Credit Cards	\$ -	\$ 15,875	\$ 12,024	\$ 11,760	\$ 9,800	\$ 11,300	\$ 9,200	\$ 9,500	\$ 21,000	\$ 24,136	\$ 27,200	\$ 23,053	\$ 20,200	\$ 195,147
Professional Fees - Flood Litigation	\$ -	\$ 24,000	\$ 16,000	\$ 9,000	\$ 4,500	\$ 3,000	\$ 3,000	\$ 3,000	\$ 5,000	\$ 10,000	\$ 20,000	\$ 25,000	\$ 22,000	\$ 144,500
Professional Fees - Legal, Accounting and Financial Advisory	\$ -	\$ 30,000	\$ 117,034	\$ 33,558	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,472	\$ 11,557	\$ 29,879	\$ 30,000
PST - Current	\$ 29,879	\$ 107,268	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 333,147
PST - Arrears - including interest & penalty	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GST - Current	\$ 5,000	\$ 63,708	\$ 77,047	\$ 8,231	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 158,886
GST - Arrears - including interest less input credits (Ord - Mart)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
WCB - Current	\$ -	\$ -	\$ -	\$ 9,419	\$ 9,000	\$ -	\$ 4,500	\$ -	\$ -	\$ 3,000	\$ -	\$ -	\$ 5,000	\$ -
Cost of Houseboat Salings	\$ -	\$ 210,000	\$ 170,000	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ 2,156	\$ 7,500	\$ 100,000	\$ 232,000	\$ 252,480	\$ 25,618
District of Seamus - Sewer Fee	\$ -	\$ -	\$ 3,110	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,093,136
BFL - Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,625	\$ -	\$ -	\$ -	\$ -	\$ 26,625
Royal Can Marine S&R - Lifeboat 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 180,000	\$ -	\$ -	\$ -	\$ 183,110
Silvertip - Park Permits	\$ -	\$ -	\$ -	\$ 14,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,000
Legal / Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ 1,000	\$ -	\$ -	\$ -	\$ 17,700	\$ -	\$ 13,000
Purchase Assets/Uniforms/Trailer/Pumps	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,400
2019 Investor Payroll	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 19,300
2018 Investor Payroll Areas	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,500
Transfer to Vinco Holdings	\$ -	\$ -	\$ 400	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000	\$ 1,000	\$ 650,000
Payment on Outstanding AP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 298,724
Total Cash Outflows	\$ 170,915	\$ 881,478	\$ 623,457	\$ 330,389	\$ 101,846	\$ 1,035,787	\$ 99,170	\$ 98,601	\$ 125,792	\$ 328,037	\$ 964,183	\$ 915,771	\$ 555,882	\$ 5,233,288
Cash Surplus / (Deficit)	\$ (120,915)	\$ (564,308)	\$ (481,357)	\$ (281,389)	\$ (61,846)	\$ (998,787)	\$ 830	\$ 110,569	\$ 324,208	\$ 601,963	\$ 945,402	\$ 56,398	\$ (128,262)	\$ (597,475)
Opening Cash Balance	\$ -	\$ (574,980)	\$ (895,905)	\$ (1,741,570)	\$ (2,022,958)	\$ (2,084,805)	\$ (3,083,572)	\$ (3,083,742)	\$ (2,872,174)	\$ (2,647,966)	\$ (2,046,003)	\$ (1,100,601)	\$ (1,044,203)	\$ (574,990)
Closing Cash Balance	\$ (695,895)	\$ (1,260,213)	\$ (1,741,570)	\$ (2,022,958)	\$ (2,084,805)	\$ (3,083,572)	\$ (3,082,742)	\$ (2,872,174)	\$ (2,647,966)	\$ (2,046,003)	\$ (1,100,601)	\$ (1,044,203)	\$ (1,172,465)	\$ (1,172,465)

Notes:

- Estimated rental deposits are based on bookings received for the 2019 season and are net of credit card processing fees
- Leases are for a six month cycle (being repaid by payroll deductions) and for a 2016 Jeep Cherokee (Scotiabank lease).
- Shop / Building expenses include supplies, parts, consumables, container rental, etc.
- Marketing expenses include costs for website maintenance, on-line marketing and advertising.
- Cost of Houseboat Salings include Houseboat repair parts, supplies to clean & stock the hsls, on boat amenities, water, ice, wood, gas, propane, retail items, Travel Agent Commission
- Balance still owing on the 2018 Investor Earnings
- Record transfer of funds to Vinco to cover fees and interest as per Forbearance Agreement
- Outstanding AP balances as of April 26, 2019 are as follows:

- outstanding AP - Trade	\$ 295,882
- outstanding AP - due to litigation	\$ 389,644
- outstanding AP - 2016 Investor payroll	\$ 623,724
- outstanding AP - 2012 Investor payroll	\$ 775,026
TOTAL outstanding AP	\$ 2,084,276

VINCO HOLDINGS LTD
13 Week Cash Flow Projection - DRAFT FOR DISCUSSION PURPOSES ONLY
Date: For the period April 28, 2019 to July 27, 2019

		Apr 28 - May 04	May 05 - 11	May 12 - 18	May 19 - 25	May 26 - Jun 01	Jun 02 - 08	Jun 09 - 15	Jun 16 - 22	Jun 23 - 29	Jun 30 - Jul 06	Jul 07 - 13	Jul 14 - 20	Jul 21 - 27	Totals
	Note	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	
Cash Inflows:															
Cash from Judgment															\$ -
Transfer in from Waterway	1	\$ 215,960	\$ 58,775	\$ 65,000	\$ 52,900	\$ 199,837	\$ 135,000	\$ 50,000	\$ 51,787	\$ 287,487	\$ 91,275	\$ -	\$ 400	\$ 5,550	\$ 1,215,960
Other Income - Lease to BSC Enterprises		\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ 2,100	\$ -	\$ -	\$ -	\$ 2,100	\$ -	\$ -	\$ -	\$ 9,200
Total Cash Inflows		\$ 220,960	\$ 58,775	\$ 65,000	\$ 52,900	\$ 199,837	\$ 137,100	\$ 50,000	\$ 51,787	\$ 287,487	\$ 93,375	\$ -	\$ 400	\$ 5,550	\$ 1,225,160
Cash Outflows:															
Vinco Bank Fees/Broker/AM	2	\$ 42,556	\$ -	\$ -	\$ -	\$ 17,566	\$ -	\$ -	\$ -	\$ 17,566	\$ -	\$ -	\$ -	\$ -	\$ 71,568
Property Insurance		\$ -	\$ 1,275	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,275	\$ -	\$ -	\$ -	\$ 2,548
Legal/Accounting		\$ -	\$ 2,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 400	\$ -	\$ 2,900
Property Taxes / Municipal Utilities		\$ -	\$ -	\$ -	\$ 2,900	\$ -	\$ -	\$ -	\$ 71	\$ -	\$ 90,000	\$ -	\$ -	\$ -	\$ 92,971
Foresore Lease		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,716	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,716
Receiver General - GST Vinco - Current		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,550	\$ -
Receiver General - GST Vinco - Acreas		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Vinco Bank Interest	3	\$ 26,467	\$ -	\$ -	\$ -	\$ 27,349	\$ -	\$ -	\$ -	\$ 20,487	\$ -	\$ -	\$ -	\$ -	\$ 74,303
Vinco Line of Credit Interest	4	\$ 21,425	\$ -	\$ -	\$ -	\$ 16,210	\$ -	\$ -	\$ -	\$ 10,732	\$ -	\$ -	\$ -	\$ -	\$ 48,367
CIBC Loan Principle Payments	5	\$ -	\$ -	\$ -	\$ -	\$ 88,712	\$ -	\$ -	\$ -	\$ 88,712	\$ -	\$ -	\$ -	\$ -	\$ 177,423
Payments on Outstanding AP	6	\$ 15,960	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,960
Transfer to Waterway	7	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,100	\$ -	\$ -	\$ -	\$ 7,100
Total Cash Outflows		\$ 111,418	\$ 3,775	\$ -	\$ 2,900	\$ 149,837	\$ 137,100	\$ 50,000	\$ 1,787	\$ 137,487	\$ 93,375	\$ -	\$ 400	\$ 5,550	\$ 506,538
Cash Surplus / (Deficit)		\$ 109,542	\$ 55,000	\$ 65,000	\$ 50,000	\$ 50,000	\$ 137,100	\$ 50,000	\$ 50,000	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ 716,642
Opening Cash Balance	8	\$ (1,964,616)	\$ (1,855,074)	\$ (1,800,074)	\$ (1,735,074)	\$ (1,685,074)	\$ (1,635,074)	\$ (1,497,974)	\$ (1,447,974)	\$ (1,397,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,964,616)
Closing Cash Balance		\$ (1,955,074)	\$ (1,800,074)	\$ (1,735,074)	\$ (1,685,074)	\$ (1,635,074)	\$ (1,497,974)	\$ (1,447,974)	\$ (1,397,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)

Notes:

1. Record payment of bills by Waterway Houseworks and transfer of funds to cover fees and interest as per Forfeiture Agreement
2. Payment by CIBC to Alvarez & Marsai Canada and Blake, Cassels & Graydon LLP
3. Interest rate of prime plus 1.25% = 5.20%
4. Interest rate of prime plus 0.75% = 4.70% on first \$1,000,000. Over that is 21%.
5. Principle payments on CIBC loans are due May, June, July and August May 31, 2019 - Credit E paid down by \$1,339,505 from Court money
6. Outstanding AP is \$15,960 as of April 27, 2019 - paid in full Week 1
7. Funds transferred to WHB to fund operations.
8. Credit line limit is currently \$1 million.

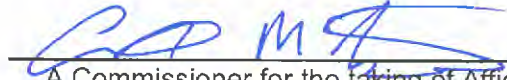
VINCO HOLDINGS LTD
Monthly Cash Flow Projection - DRAFT FOR DISCUSSION PURPOSES ONLY
July 28, 2019 to July 31, 2020

	Note	July 28 - 31	August	September	October	November	December	January	February	March	April	May	June	July	Totals
Cash Inflows:															
Court Judgement	1		\$ 589,505												\$ 589,505
Transfer in from Waterway	2	\$ 135,471	\$ 136,574	\$ 400											\$ 272,444
Other Income - Lease to 1937 Enterprises			\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 25,200
Total Cash Inflows		\$ 135,471	\$ 136,674	\$ 592,005	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 2,100	\$ 887,149
Cash Outflows:															
Vinco Bank Fees		\$ 17,566	\$ 17,568	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 66	\$ 67	\$ 35,859
Property Insurance					\$ 1,300						\$ 2,433				\$ 3,733
Legal/Accounting				\$ 400	\$ 16,000			\$ 2,500	\$ 2,444		\$ 2,500	\$ 2,900		\$ 400	\$ 21,800
Property Taxes / Municipal Utilities			\$ 1,495							\$ 7,680					\$ 6,339
Forshore Lease															\$ 7,890
Receiver General - GST Vinco					\$ 5,550			\$ 5,550			\$ 5,550			\$ 5,550	\$ 22,200
Vinco loan interest	2	\$ 20,778	\$ 20,367	\$ 19,350	\$ 19,084	\$ 18,468	\$ 19,084	\$ 19,084	\$ 17,260	\$ 19,084	\$ 18,468	\$ 19,084	\$ 18,213	\$ 18,558	\$ 246,900
Vinco Line of Credit Interest	3	\$ 8,415	\$ 8,415	\$ 8,143	\$ 2,730	\$ 2,807	\$ 2,977	\$ 3,057	\$ 2,985	\$ 3,252	\$ 3,255	\$ 3,484	\$ 3,692	\$ 4,619	\$ 57,810
CIBC Loan Principle Payments	4	\$ 88,712	\$ 88,712									\$ 59,545	\$ 59,545	\$ 59,545	\$ 356,058
Payments on Outstanding AP														#	\$
Transfer to Waterway			\$ 2,100												\$ 2,100
Total Cash Outflows		\$ 135,471	\$ 136,674	\$ 27,959	\$ 44,730	\$ 21,341	\$ 22,127	\$ 30,257	\$ 22,735	\$ 30,081	\$ 32,272	\$ 65,078	\$ 81,517	\$ 88,739	\$ 760,979
Cash Surplus / (Deficit)		\$	\$	\$ 564,046	\$ (42,630)	\$ (19,241)	\$ (20,027)	\$ (28,157)	\$ (20,835)	\$ (27,981)	\$ (30,172)	\$ (82,978)	\$ (79,417)	\$ (86,639)	\$ 128,170
Opening Cash Balance	5	\$ (1,247,974)	\$ (1,247,974)	\$ (1,247,974)	\$ (683,928)	\$ (726,557)	\$ (745,798)	\$ (765,824)	\$ (793,881)	\$ (814,616)	\$ (842,598)	\$ (872,770)	\$ (955,748)	\$ (1,035,165)	\$ (1,247,974)
Closing Cash Balance		\$ (1,247,974)	\$ (1,247,974)	\$ (683,928)	\$ (726,557)	\$ (745,798)	\$ (765,824)	\$ (793,881)	\$ (814,616)	\$ (842,598)	\$ (872,770)	\$ (955,748)	\$ (1,035,165)	\$ (1,121,803)	\$ (1,121,803)

Notes:

1. Court Expenses paid - recorded in Vinco, Credit L. paid off and \$87,500 held by CIBC
2. Record payment of bills by Waterway Houseboats and transfer of funds to cover fees and interest as per Forbearance Agreement
3. Interest rate of prime plus 1.25% = 5.20%.
3. Interest rate of prime plus 0.75% = 4.70% on first \$1,000,000. Over that is 21%.
4. Loan Principle payments May - August
5. Credit line limit is currently \$1 million.

This is **Exhibit "X"** referred to in the Affidavit of Supriya Sarin made before me at Toronto, Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to read 'C. P. M. A.', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario

WATERWAY HOUSEBOATS LTD

MONTHLY VARIANCE ANALYSIS

TO MARCH 30, 2019

BASED ON:

MARCH 3, 2019 CASH FLOW MODEL V2

VARIANCES	ACTUAL	PROJECTED	VARIANCE	COMMENTS
CASH INFLOWS				
Houseboat Rentals	417,316	605,000	(187,684)	Less deposits came in then projected
Transfer from BCCR	6,200	10,000	(3,800)	
Other Income	8,532	250	8,282	March 18 payment from Groupon
TOTAL CASH INFLOWS	432,048	615,250	(183,202)	
CASH OUTFLOWS				
Blue Birch Lease / Jeep Lease	515	970	(456)	timing issue
Bank / Credit Card Fees	147	204	(57)	timing issue
Employee Benefits & MSP	2,679	2,672	7	
Payroll	34,073	37,000	(2,927)	
Payroll Remittance	16,633	16,633	{0}	
Utilities - Telus/Hydro/Bell/Mascon	10,157	5,110	5,047	Refundable Deposits of \$4,494 required
Shop / Building Expenses	2,309	6,636	(4,327)	
Office / Computer Expense	3,770	1,704	2,066	
Marketing	17,187	21,028	(3,841)	
Credit Cards	17,409	11,500	5,909	
Professional Fees - Flood Litigation	-	-	-	
Professional Fees - Legal, Appraisal and Financial Advisory	13,493	30,000	(16,508)	Invoices not received yet
Professional Fees - Course of Business	1,533	1,000	533	
Cost of Houseboat Sailings - Parts/Supplies/Fuel	2,156	12,656	(10,500)	not due yet
District of Sicamous - Annual Sewer Fee	-	26,645	(26,645)	New system in place, invoice not received yet
BFL - INSURANCE	-	-	-	
Royal Cdn Marine S&R - Lifeboat 1	-	-	-	
Silvertip - Park Permits	-	-	-	
PST - Current	-	-	-	
PST - Arrears	70,000	70,000	-	
WCB - Current	-	-	-	
WCB - Arrears including Interest and penalty	-	-	-	
GST - Current	-	-	-	
GST - Arrears	52,584	56,036	(3,452)	GST input credit differences
Purchase Assets/Uniforms/Trailer/Pumps	-	-	-	
2018 Investor Payout	-	-	-	
Transfer to Vinco	106,939	106,870	69	
Protective Disbursements	125,661	123,228	2,432	
Payment on Outstanding A/P	20,732	77,949	(57,217)	NO PAYMENT MADE TO RUSH IHAS
TOTAL CASH OUTFLOW	497,975	607,842	(109,866)	
CASH SURPLUS / (DEFICIT)	(65,927)	7,408	(73,335)	
OPENING CASH BALANCE	73,998	73,998	-	
CLOSING CASH BALANCE	8,071	81,406	(73,335)	

WATERWAY HOUSEBOATS LTD

MONTHLY VARIANCE ANALYSIS

TO APRIL 27, 2019

BASED ON:

MARCH 24, 2019 CASH FLOW MODEL

VARIANCES	ACTUAL	PROJECTED	VARIANCE	COMMENTS
CASH INFLOWS				
Houseboat Rentals	872,975	1,350,000	(477,025)	Less deposits/bookings came in then projected
Transfer from Vinco	7,103	—	—	Payment from Vinco to pay Vinco bills
Transfer from BCCR	19,300	15,000	4,300	Payment on account
Other Income	14,801	—	14,801	Payment from Groupon and Misc
TOTAL CASH INFLOWS	914,179	1,365,000	(450,821)	
CASH OUTFLOWS				
Blue Birch Lease / Jeep Lease	456	458	(2)	timing issue
Bank / Credit Card Fees	224	102	122	timing issue
Employee Benefits & MSP	2,910	2,886	24	
Payroll	54,779	61,600	(6,821)	later hiring of some employees
Payroll Remittance	25,898	26,924	(1,026)	later hiring of some employees
Utilities - Telus/Hydro/Bell/Mascon	13,967	12,610	1,357	Actual costs
Shop / Building Expenses	1,974	5,302	(3,328)	postponed a few projects
Office / Computer Expense	3,321	6,922	(3,601)	postponed a few projects
Marketing	25,304	33,947	(8,643)	invoice not due yet
Credit Cards	13,065	15,006	(1,941)	postponed a few projects
Professional Fees - Flood Litigation	30,000	10,000	20,000	Appreal Retainer
Professional Fees - Legal, Appraisal and Financial Advisory	10,421	30,000	(19,579)	Invoices not received yet
Professional Fees - Course of Business	1,000	—	1,000	Invoices received
Cost of Houseboat Sailings - Parts/Supplies/Fuel	6,280	11,748	(5,468)	not due yet
District of Sicamous - Annual Sewer Fee	—	26,645	(26,645)	New system in place, invoice not received yet
BFL - INSURANCE	—	180,462	(180,462)	Paying in May
Royal Cdn Marine S&R - Lifeboat 1	—	—	—	
Silvertip - Park Permits	—	—	—	
PST - Current	—	—	—	
PST - Arrears	52,348	51,791	557	Interest charges
WCB - Current	2,525	2,944	(419)	decreased rate
WCB - Arrears including Interest and penalty	—	—	—	
GST - Current	—	—	—	
GST - Arrears	—	—	—	
Purchase Assets/Uniforms/Trailer/Pumps	—	3,500	(3,500)	Postponed
2018 Investor Payout	—	195,182	(195,182)	paying in May
Transfer to Vinco	286,535	305,000	(18,465)	payment made as required
Protective Disbursements	249,730	248,698	1,032	Interest on outstanding Invoices paid
Payment on Outstanding A/P	49,911	51,224	(1,313)	not paying until May
TOTAL CASH OUTFLOW	830,650	1,282,951	(452,301)	
CASH SURPLUS / (DEFICIT)	83,529	82,049	1,480	
OPENING CASH BALANCE	8,070	129,732	(121,662)	
CLOSING CASH BALANCE	91,599	211,781	(120,182)	

This is **Exhibit "Y"** referred to in the Affidavit of Supriya Sarin made before me at , Ontario this 27th day of May 2019.

A handwritten signature in blue ink, appearing to be 'CD M/R', is written over a horizontal line.

A Commissioner for the taking of Affidavits for
Ontario



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

May 14, 2019

Peter Rubin
Dir: 604-631-3315
peter.rubin@blakes.com

VIA EMAIL & COURIER

Reference: 2100/215

Vinco Holdings Ltd.
Landmark 6
1100 – 1631 Dickson Avenue
Kelowna, BC
V1Y 0B5

Waterway Houseboats Ltd.
Landmark 6
1100 – 1631 Dickson Avenue
Kelowna, BC
V1Y 0B5

c/o Geord Holland Law Corp.
1100 – 1631 Dickson Avenue
Kelowna, BC V1Y 0B5

c/o Geord Holland Law Corp.
1100 – 1631 Dickson Avenue
Kelowna, BC V1Y 0B5

Attention: Geord Holland

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RE: Credit Agreement between Vinco Holdings Ltd. and Canadian Imperial Bank of Commerce

Forbearance Agreement dated March 1, 2019

Demand for Payment

Dear Mr. Holland,

We write on behalf of our client the Canadian Imperial Bank of Commerce ("**CIBC**") and to you in your capacity as counsel to Vinco Holdings Ltd. (the "**Borrower**") and Waterway Houseboats Ltd. (the "**Guarantor**").

We write with respect to the Credit Agreement entered into between the Borrower and CIBC, as lender, dated December 8, 2011, and the amendments thereto (collectively, the "**Credit Agreement**"), the Forbearance Agreement (the "**Forbearance Agreement**") dated March 1, 2019, between CIBC, the Borrower and the Guarantor, and all related agreements and documents. As you are aware, the Guarantor has granted an unlimited guarantee in favour of CIBC to secure the Borrower's obligations to CIBC. This letter constitutes notice to both the Borrower and the Guarantor.

Pursuant to the various loans provided to the Borrower under the Credit Agreement, the total amount owing by the Borrower to CIBC as of May 14, 2019 is \$7,969,327.03, plus interest accrued thereon from such date at the applicable rates, together with all applicable costs, expenses and charges, including but not limited to legal and other fees incurred by or on behalf of CIBC pursuant to the Credit Agreement.

Agreement, the Forbearance Agreement, and any other agreements between the Borrower, the Guarantor and CIBC (the "**Indebtedness**").

The Borrower and the Guarantor's obligations to repay the Indebtedness on demand are secured by, among other things:

- (a) a Security Agreement dated November 29, 2010, granting CIBC security in all of the Borrower's present and after-acquired personal property and Crown License of Occupation 344093;
 - (b) a Mortgage and Assignment of Rents dated November 29, 2010 (the "**Mervyn Road Mortgage**"), granting CIBC security in the property owned by the Borrower located at 1 Mervyn Road, Sicamous, BC (the "**Mervyn Road Property**");
 - (c) two Mortgages dated April 4, 2019 (together with the Mervyn Road Mortgage, the "**Mortgages**") granting CIBC security in the properties owned by the Borrower located at 1265 Monashee Frontage Road, Sicamous, BC and 1272 Titus Road, Sicamous, BC (together with the Mervyn Road Property, the "**Properties**");
 - (d) a Mortgage of License of Occupation dated November 29, 2010, granting CIBC security in the Borrower's interest in Crown License of Occupation 344093;
 - (e) a Security Agreement dated November 29, 2010, granting CIBC security in all of the Guarantor's present and after-acquired personal property;
 - (f) pursuant to the terms of the Forbearance Agreement and the vessel mortgages granted by the Guarantor in favour of CIBC, a security interest over all of the houseboats and other boats owned by the Guarantor and the Borrower; and
 - (g) an unlimited Assignment and Postponement of Claim by John Vinje, dated January 24, 2012
- (collectively, the "**Security**").

Following defaults made by the Borrower under the terms of the Credit Agreement, CIBC, the Borrower and the Guarantor entered into the Forbearance Agreement, whereby CIBC agreed to forbear from exercising its rights under the Credit Agreement against the Borrower and the Guarantor. The Forbearance Agreement was entered into on the express understanding and agreement that the loans provided to the Borrower by CIBC under the Credit Agreement remained demand loans, payable to CIBC upon demand in its discretion on the same basis as set out in the Credit Agreement.

CIBC hereby demands that the Borrower pay the Indebtedness, the amount of which shall continue to accrue in accordance with the applicable terms of the Credit Agreement and the Security, to CIBC no later than May 24, 2019.

In addition, CIBC has determined that certain material adverse changes have recently occurred in the affairs of the Borrower and the Guarantor (the "**Material Changes**"). The Material Changes currently known to CIBC include the following:

- (a) the Reasons for Judgment of Justice Weatherill dated April 16, 2019, in *Waterway Houseboats Ltd. v. British Columbia*, 2019 BCSC 581, Action No. S103630 granted an award of damages to the Borrower and the Guarantor in an amount that was both materially less than:
 - i. the amount claimed by the Borrower and the Guarantor; and
 - ii. the amount that the Borrower and the Guarantor expected to be awarded by the Court;
- (b) the number of upcoming houseboat bookings and expected revenue is materially lower than anticipated by the Borrower and the Guarantor and contemplated in cash flow forecasts presented to CIBC; and
- (c) as indicated in the cash flow forecasts provided to CIBC by the Borrower, there is a material shortfall in the cash position of the Borrower and the Guarantor anticipated to occur in the coming weeks.

Pursuant to section 7.3 of the Forbearance Agreement, CIBC declares its obligations to forbear under the Forbearance Agreement are of no further force and effect. On this basis, CIBC again demands that the Borrower pay the Indebtedness, the amount of which shall continue to accrue in accordance with the applicable terms of the Credit Agreement and the Security, to CIBC no later than the date set out above.

Should the Borrower fail to pay the Indebtedness to CIBC by May 24, 2019, CIBC reserves its rights to take steps to enforce its legal rights under the Credit Agreement, the Security and otherwise at law or in equity without further notice, including without limitation by commencing legal proceedings against either of the Borrower or the Guarantor, enforcing the Mortgages against the Properties, seeking the appointment of a Receiver or Receiver-Manager, and all other available remedies. Enclosed with this letter are Notices of Intention to Enforce Security addressed to both the Borrower and the Guarantor.

We confirm that CIBC has not waived, and hereby expressly reserves, its rights to take all further and additional actions available to CIBC under the Credit Agreement and the Security, or any other agreements among CIBC and the Borrower, the Guarantor, or any other related party, or otherwise available at law or in equity.

Yours truly,



Peter Rubin

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NOTICE OF INTENTION TO ENFORCE SECURITY
(Rule 124)
(Section 244 of the Bankruptcy and Insolvency Act)

TO: Vinco Holdings Ltd. (the "**Debtor**")

Take notice that:

1. The Canadian Imperial Bank of Commerce ("**CIBC**"). a secured creditor, intends to enforce its Security (as defined herein) on the property of the Debtor, as more particularly described in Schedule "A" hereto.
2. The security that is to be enforced is in the form of:
 - a. A Land Title Act Form B Mortgage and Assignment of Rents dated November 29 2010, by and among the Debtor, as mortgagor, and CIBC, as mortgagee;
 - b. Two Land Title Act Form B Mortgages dated April 4, 2019, by and among the Debtor, as mortgagor, and CIBC as mortgagee;
 - c. A Mortgage of License of Occupation dated November 29, 2010; and
 - d. A Security Agreement dated November 29, 2010, by the Debtor in favour of CIBC(collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security is \$7,969,327.03 at May 14, 2019, plus interest accrued thereon from such date at the applicable rates, together with all applicable costs, expenses and charges, including but not limited to legal and other fees incurred by or on behalf of CIBC.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

Dated at Vancouver, British Columbia this 14th day of May, 2019.

**THE CANADIAN IMPERIAL BANK OF
COMMERCE, by its authorized agent**

Per: _____

Blake, Cassels & Graydon LLP

Schedule A

All of the Debtor's present and after-acquired undertakings and personal property.

All of the Debtor's right, title and interest in License of Occupation 344093, granted by Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister responsible for the *Land Act* over all that unsurveyed Crown foreshore being part of the bed of Mara Lake and fronting Lot 1 Sections 19 and 30 Township 12 Range 7 West of the 6th Meridian, Kamloops Division, Yale District, Plan KAP86301 and containing 0.49 hectares, more or less, for the term mentioned therein, for a commercial marina including the moorage of houseboats.

The real property owned by the Debtor located at 1 Mervyn Road, legally described as:

PID: 027-514-013

Lot 1, Sections 19 and 30, Township 21, Range 7, W6M, Kamloops Division Yale District.

The real property owned by the Debtor located at 1265 Monashee Frontage Road, legally described as:

PID: 023-231-939

Lot 1, Plan NEP 22615, Section 6, Township 22, Range 7, W6M, Kamloops Division Yale District.

The real property owned by the Debtor located at 1272 Titus Road, legally described as:

PID: 024-940-917

Lot 1, Plan NEP 68382, Section 6, Township 22, Range 7, W6M, Kamloops Division Yale District.

WAIVER

Vinco Holdings Ltd. hereby waives the notice period provided for under Section 244(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and consents to the immediate enforcement by CIBC of the Security described above.

DATED at _____, British Columbia, this ____ day of May, 2019

VINCO HOLDINGS LTD.

By: _____

Name:

Title:

NOTICE OF INTENTION TO ENFORCE SECURITY
(Rule 124)
(Section 244 of the Bankruptcy and Insolvency Act)

TO: Waterway Houseboats Ltd. (the "**Guarantor**")

Take notice that:

1. The Canadian Imperial Bank of Commerce ("**CIBC**"), a secured creditor of Vinco Holdings Ltd. (the "**Debtor**") , whose debts to CIBC the Guarantor has guaranteed pursuant to the unlimited guarantee granted by the Guarantor to CIBC on November 29, 2010, intends to enforce its Security (as defined herein) on the property of the Guarantor listed in Schedule A hereto.
2. The security that is to be enforced is in the form of a Security Agreement dated November 29, 2010 (the "**Security**"), including vessel mortgages granted to the Borrower by the Guarantor effective March 1, 2018 on the following houseboats

Official Number: 820180 – Natalie's Arc
Official Number: 820182 – Hank the Moose
Official Number: 820044 – Number 7-I
Official Number: 820180 – Destiny VI
Official Number: 820172 – Aprirus
Official Number: 830909 – Penelope II
Official Number: 826285 – Double Play
Official Number: 819514 – Roxy I
Official Number: 819513 – Immanuel I

3. The total amount of indebtedness secured by the Security is \$7,969,327.03 at May 14, 2019, plus interest accrued thereon from such date at the applicable rates, together with all applicable costs, expenses and charges, including but not limited to legal and other fees incurred by or on behalf of CIBC.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Guarantor consents to an earlier enforcement.

Dated at Vancouver, British Columbia this 14th day of May, 2019.

[signature page follows]

THE CANADIAN IMPERIAL BANK OF
COMMERCE, by its authorized agent

Per: _____

Blake, Cassels & Graydon LLP

Schedule A

All of the Guarantor's present and after-acquired undertakings and personal property, including but not limited to all boats and vessels owned by the Guarantor, which include the following houseboats and other boats:

- Official Number: 820180 – Natalie's Arc
- Official Number: 820182 – Hank the Moose
- Official Number: 820044 – Number 7-I
- Official Number: 820180 – Destiny VI
- Official Number: 820172 – Aprirus
- Official Number: 830909 – Penelope II
- Official Number: 826285 – Double Play
- Official Number: 819514 – Roxy I
- Official Number: 819513 – Immanuel I
- Official Number: C07547BC – Harbercraft Workboat
- Official Number: C12492BC – Silver Wolf Workboat

WAIVER

Waterway Houseboats Ltd. hereby waives the notice period provided for under Section 244(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and consents to the immediate enforcement by CIBC of the Security described above.

Dated at _____, British Columbia, this ____ day of May, 2019.

WATERWAY HOUSEBOATS LTD.

By: _____

Name:

Title: