

**CAVEAT FORBIDDING REGISTRATION**

**TO: THE REGISTRAR, NORTH ALBERTA LAND REGISTRATION DISTRICT**

**TAKE NOTICE THAT WEST EDMONTON MALL PROPERTY INC., (the "Caveator"), a body corporate incorporated pursuant to the laws of the Province of Alberta, claims an interest in the below described lands as a result of the following:**

1. TD Trust Company has an interest in the lands described below (the "Lands") pursuant to a mortgage dated as of October 31, 1994 and registered in the Land Titles Registry on November 2, 1994 as instrument number 942 341 145, as amended from time to time (the "First Mortgage") and pursuant to a mortgage dated as of October 31, 1994 and registered on November 2, 1994 as instrument number 942 341 149, as amended from time to time (the "Second Mortgage").
2. The Province of Alberta Treasury Branches ("ATB") has an interest in the First Mortgage pursuant to the terms and conditions of a loan agreement made in writing between the Toronto Dominion Bank ("TD Bank"), ATB and the Caveator dated October 31, 1994 (the "First Loan Agreement"), a servicing agreement made in writing among TD Bank, ATB, Nomura Canada Inc., the Caveator and TD Trust Company dated October 31, 1994 (the "First Servicing Agreement") and a guarantee agreement in writing made between ATB and TD Bank dated October 31, 1994 (the "Guarantee"). Under the Guarantee, ATB has the right to purchase all or any of the rights and interests of the TD Bank under the First Loan Agreement and the First Mortgage.
3. The Province of Alberta Treasury Branches ("ATB") is the beneficial owner of the Second Mortgage pursuant to the terms and conditions of a loan agreement made in writing between the ATB and the Caveator dated October 31, 1994 (the "Second Loan Agreement") and a servicing agreement made in writing among ATB, the Caveator and TD Trust Company dated October 31, 1994 (the "Second Servicing Agreement") whereby ATB, the Caveator and TD Trust Company all agreed and acknowledged that the Second Mortgage is held by TD Trust Company in trust for the benefit of ATB.
4. Pursuant to the terms and conditions of an agreement made in writing between ATB and the Caveator dated March 26, 1996 (the "Right of First Refusal Agreement") (a partial copy of which is attached hereto), ATB granted the Caveator certain rights, including a right of first refusal to purchase any outstanding mortgage or mortgages, as the case may be, or any part thereof, that ATB as beneficiary, grantor or otherwise holds on the Lands. In addition, the Right of First Refusal Agreement entitles the Caveator to receive an entire copy of any offer made to ATB by a third party to purchase any outstanding mortgage or mortgages, as the case may be, or any part thereof, that ATB as beneficiary, grantor or otherwise holds on the Lands.
5. The Caveator claims an equitable interest in the Lands, the First Mortgage and the Second Mortgage, all pursuant to the Right of First Refusal Agreement.

The Lands to which the Caveator claims the above described interest are as follows:

- FIRSTLY:     PLAN 8222590  
                  BLOCK 28  
                  LOT 4  
                  EXCEPTING THEREOUT ALL MINES AND MINERALS**
- SECONDLY:    PLAN 8421891  
                  BLOCK TWENTY EIGHT (28)  
                  LOT FIVE (5)  
                  CONTAINING 17.24 HECTARES (42.60 ACRES) MORE OR LESS  
                  EXCEPTING THEREOUT:  
                  0.13 HECTARES (0.32 ACRES) MORE OR LESS AS SHOWN  
                  ON ROAD PLAN 872 2459  
                  EXCEPTING THEREOUT ALL MINES AND MINERALS**

THIRDLY: PLAN 8421891  
BLOCK 28  
LOT 6  
EXCEPTING THEREOUT ALL MINES AND MINERALS

FOURTHLY: PLAN 8471542 ✓ *AK* - Correction made by Andrew J. W. Haynes,  
BLOCK 22  
LOT 6A  
EXCEPTING THEREOUT ALL MINES AND MINERALS

FIFTHLY: PLAN 8322082  
BLOCK 22  
LOT 7  
EXCEPTING THEREOUT ALL MINES AND MINERALS

*Andrew J. W. Haynes,  
Barrister & Solicitor - Solicitor for the Caveator.*  
*[Signature]*

standing in the register in the name of WEST EDMONTON MALL PROPERTY INC. and the Caveator forbid the registration of any person as transferee or owner of, or of any instrument affecting that estate or interest, unless the Certificate of Title is expressed to be subject to its claim.

The Caveator designates the following address as the place at which notices and proceedings relating hereto may be served:

600, 12220 Stony Plain Road  
Edmonton, Alberta, T5N 3Y4

IN WITNESS WHEREOF, the Caveator has hereunto subscribed its name this          day of June, 1998.

WEST EDMONTON MALL PROPERTY INC.

*Per M. Halliday*

**AFFIDAVIT IN SUPPORT OF CAVEAT**

- 1. Mavis Halliday, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS;
- 1. I am an officer of the above-named Caveator.
- 2. I believe that the Caveator has a good and valid claim on the Lands and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal with it.

SWORN BEFORE ME,  
at Edmonton, in the Province of  
Alberta, this      day of  
June, 1998  
*[Signature]*  
A Commissioner for the District Court for  
the Province of Alberta

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)  
) *M. Halliday*  
)  
)  
)

1400CEJAN/30298 I  
  
**ANDREW J. W. HAYNES**  
**BARRISTER & SOLICITOR**

Re: The Loan Agreement dated October 31, 1994  
Between West Edmonton Mall Property Inc. ("Mallco"),  
Toronto Dominion Bank ("TD Bank") and  
Province of Alberta Treasury Branches ("ATB")  
together with all other agreements and amendments  
related thereto ("Loan Agreements")

In consideration of Ten (\$10) Dollars now paid by Mallco to ATB and all other good and valuable things, the receipt and sufficiency of which is hereby acknowledged by ATB, ATB does hereby agree that in the event ATB, TD Bank or TD Trust Company (each the "Receiving Party") from time to time receives an offer with all conditions therein removed other than the Right as hereinafter defined ("Offer") from any party to purchase the then outstanding mortgage or mortgages, as the case may be, or any part thereof ("Interest") that ATB as beneficiary, grantor or otherwise holds on the property commonly known as West Edmonton Mall, located in the City of Edmonton, Province of Alberta, and if the Offer is accepted by the Receiving Party, then ATB shall cause to be provided to Mallco in each case a 120 day first right of refusal ("Right") to match such offer after its acceptance by the Receiving Party. ATB further agrees to cause the Right herein to be included in any such Offer accepted by the Receiving Party.

ATB agrees to cause an entire copy of any Offer received by the Receiving Party for the interest to be provided to Mallco within two weeks from the date of the receipt thereof by the Receiving Party. For further clarity, ATB shall cause the closing of the sale of the Interest not to occur without ATB first affording Mallco the Right as provided herein.

The parties hereto agree to and accept the terms and conditions hereof by signing hereunder.

Dated: March 26, 1995

**CAVEAT FORBIDDING REGISTRATION**

**TO: THE REGISTRAR, NORTH ALBERTA LAND REGISTRATION DISTRICT**

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2. The Province of Alberta Treasury Branches ("ATB") has an interest in the First Mortgage pursuant to the terms and conditions of a loan agreement made in writing between the Toronto Dominion Bank ("TD Bank"), ATB and the Caveator dated October 31, 1994 (the "First Loan Agreement"), a servicing agreement made in writing among TD Bank, ATB, Nomura Canada Inc., the Caveator and TD Trust Company dated October 31, 1994 (the "First Servicing Agreement") and a guarantee agreement in writing made between ATB and TD Bank dated October 31, 1994 (the "Guarantee"). Under the Guarantee, ATB has the right to purchase all or any of the rights and interests of the TD Bank under the First Loan Agreement and the First Mortgage.
3. The Province of Alberta Treasury Branches ("ATB") is the beneficial owner of the Second Mortgage pursuant to the terms and conditions of a loan agreement made in writing between the ATB and the Caveator dated October 31, 1994 (the "Second Loan Agreement") and a servicing agreement made in writing among ATB, the Caveator and TD Trust Company dated October 31, 1994 (the "Second Servicing Agreement") whereby ATB, the Caveator and TD Trust Company all agreed and acknowledged that the Second Mortgage is held by TD Trust Company in trust for the benefit of ATB.
4. The Caveator, as mortgagor of the First Mortgage and the Second Mortgage, claims an interest in the First Mortgage and the Second Mortgage pursuant to that latter agreement made in writing between the Caveator and ATB dated November 15, 1994, which amends ATB's rights under and interest in the First Mortgage and the Second Mortgage, both as amended from time to time (a partial copy of which is attached hereto).

**The Lands to which the Caveator claims the above described interest are as follows:**

**FIRSTLY:      PLAN 8222590  
                  BLOCK 28  
                  LOT 4  
                  EXCEPTING THEREOUT ALL MINES AND MINERALS**

**SECONDLY:    PLAN 8421891  
                  BLOCK TWENTY EIGHT (28)  
                  LOT FIVE (5)  
                  CONTAINING 17.24 HECTARES (42.60 ACRES) MORE OR LESS  
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                  0.13 HECTARES (0.32 ACRES) MORE OR LESS AS SHOWN  
                  ON ROAD PLAN 872 2459  
                  EXCEPTING THEREOUT ALL MINES AND MINERALS**

**THIRDLY:     PLAN 8421891  
                  BLOCK 28  
                  LOT 6  
                  EXCEPTING THEREOUT ALL MINES AND MINERALS**

47A - 47A  
FOURTHLY: PLAN 84215-02  
BLOCK 22  
LOT 6A  
EXCEPTING THEREOUT ALL MINES AND MINERALS

Correction made by Andrew J. W. Haynes,  
Barrister & Solicitor - Solicitor for the Caveator



FIFTHLY: PLAN 8322082  
BLOCK 22  
LOT 7  
EXCEPTING THEREOUT ALL MINES AND MINERALS

standing in the register in the name of WEST EDMONTON MALL PROPERTY INC. and the Caveator forbid the registration of any person as transferee or owner of, or of any instrument affecting that estate or interest, unless the Certificate of Title is expressed to be subject to its claim.

The Caveator designates the following address as the place at which notices and proceedings relating hereto may be served:

600, 12220 Stony Plain Road  
Edmonton, Alberta, T5N 3Y4

IN WITNESS WHEREOF, the Caveator has hereto subscribed its name this        day of June, 1998.

WEST EDMONTON MALL PROPERTY INC.

Per M. Houlden

#### AFFIDAVIT IN SUPPORT OF CAVEAT

LEONARD HAWKSWAY of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am an officer of the above-named Caveator.
2. I believe that the Caveator has a good and valid claim on the land and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal with it.

SWORN BEFORE ME,  
at Edmonton, in the Province of  
Alberta, this 25th day of  
June, 1998

Andrew J. W. Haynes  
A Commissioner for Oaths in the  
Province of Alberta

M. Houlden

H:\DOCS\AFFIDAVIT

ANDREW J. W. HAYNES  
BARRISTER & SOLICITOR

WEST EDMONTON MALL PROPERTY INC.

Suite 2000, 8770 - 170 Street

Edmonton, Alberta T6T 4M2

Tel.: (403) 444-8100 / Fax: (403) 444-5232

November 16, 1994

Province of Alberta Treasury Branches  
1200 ATB Plaza, 9925 - 108 Street  
Edmonton, AB T6J 2N8

Attention: Mr. Elmer Leahy

Dear Sir:

Re: The Loan Agreement Dated October 31, 1994 Between West Edmonton Mall Property Inc. the Toronto Dominion Bank and Province of Alberta Treasury Branches, the Cash Flow Control Agreement, the Second Loan Agreement, all together with all other agreements related thereto (collectively "Loan Agreements")

At the time of our execution of the Loan Agreements, we required certain amendments which ATB promised to implement later as ATB wished to prevent delays, business interruption, and negative publicity and partly due to a Government study which had revealed the economic and tourism impact of the mall to be quite significant. This letter respectively confirms and records our mutual understanding and our agreement, effective retroactively as at October 31, 1994, with the Province of Alberta Treasury Branches, as follows, respecting the Loan Agreements, that notwithstanding anything to the contrary:

(i) each and every one of our payments (each a "Payment"), including ATB Fee, reductions of principal amount of mortgages, Excess Cash Flow distribution, etc., made, accruing, falling due or payable to ATB with respect to the existing first Mortgage "First Mortgage" and the Second Mortgage (as well before as after its full retirement) on the West Edmonton Mall "WEM" property (Mortgaged Property) shall, as of payment date thereof, bear compounded interest (hereinafter defined and described), and together with such interest be thereafter applied by ATB in its entirety: (a) first against the outstanding principal amount of the Second Mortgage (to be discounted to its present value as at October 31, 1994 as described below) "Second Principal" to reduce and retire same in full (this despite our earlier discussions of retiring the Second Mortgage through a \$3.6 million Strip Bond), and thereafter, (b) against the outstanding principal amount of the First Mortgage "First Principal" to reduce same, with every such reduction of First Principal being deemed retired. The interest "Interest" shall be calculated and compounded monthly on each Payment, as at payment date thereof, and until such Payment is actually applied against the First Principal and/or Second Principal (as the case may be), at an annual rate equal to the TD Prime Rate. ATB shall cause each and every Payment, after it is paid (including the interest earned thereon), and after its application against the Second Principal and to the extent required to fully retire same, to be applied against and reduce the First Principal and ATB shall in any event so apply every Payment including the interest earned thereon by no later than October 31, 2014; (ii) once the paid Payment/s together with interest earned thereon first aggregate the principal amount of the Second Mortgage, after such principal amount is present valued to October 31, 1994, calculated at seven (7%) percent discount per annum, compounded annually, for the unexpired term of the Second Mortgage, then at that time all of the indebtedness under the Second Mortgage Loan Agreement shall be deemed fully repaid, retired and satisfied and all obligations of Mallico to ATB thereunder terminated and ATB shall thereafter upon request by Mallico discharge all of the Second Mortgage security at all registry offices where same is registered; (iii) commencing October 31, 1994 until October 31, 2014 the principal amount of the First Mortgage shall not be required to be reduced during any consecutive 12 months period by more than 50% of Excess Cash Flow for same period; (iv) WEM Management Inc. shall remain Manager of West Edmonton Mall property until October 31, 2014 and the Directing Party shall have no right to change same, and Management Fees shall at no time be assigned directly or indirectly in favour of any of ATB, Directing Party, TD Bank, Secured Parties or Servicer, and an entity beneficially owned by our beneficial owners would consider developing a hotel in the phase 1 of the West Edmonton Mall property; (v) Loan Agreement and/or the Cash Flow Control Agreement (as the case may be) shall be revised so that the order of priority of payments, out of Mall Revenues and/or Costs Account, shall be 1) Basic Carrying Costs 2) Operating Costs 3) Management Fees and 4) Debt Service Costs; (vi) at Mallico's election, monies in any of the Costs Account, Improvements Account, the Fees Account or other accounts pledged as security for the TD Credit Facility may be used by Mallico, to the extent necessary, to fully, satisfy, to the extent available, any or all of Basic Carrying Costs, Operating Costs, Management Fees and Debt Service Costs; (vii) any information required to be furnished by Mallico may be furnished only to the Directing Party and only to the extent, as from time to time, may be requested by the Directing Party; (viii) the interest rate on the Acquired Debt shall at all times be equal to the TD Designated Rate; (ix) ATB Termination Date, the TD Maturity Date the TD Tenth Anniversary Date shall all be October 31, 2014 (resulting in an extension of ten years) and upon presentation of a copy hereof to TD Bank this letter agreement shall constitute sufficient authorization and instruction to TD Bank from ATB to implement the contents of this clause to the extent requiring TD Bank's implementation; (x) ATB shall, from time to time, upon Mallico's request, fund all (if any) shortfalls "Shorts" in Mall Revenues or Costs Account to the extent necessary to pay Debt Service Costs, Basic Carrying Costs, Operating Costs and Management Fees, and such Shorts shall, as of the date funded by ATB and until repaid, bear interest at a rate per annum equal to TD Prime Rate plus 200 basis points, be repaid to ATB out of Excess Cash Flow (as such becomes available), constitute Secured Indebtedness and in any event repaid to ATB in full by no later than October 31, 2014; (xi) until October 31, 2014 any default by Mallico Group of Companies including Potential Default or Event of Default, caused or arising as a result of any of the terms and provisions herein amending any part of the Loan Agreements, shall at all times be deemed not caused, not arisen and not occurred; (xii) the Loan Agreements are to be governed according to the laws of Province of Alberta but either or all of the parties hereto shall have the right to take proceedings in a jurisdiction other than Alberta; (xiii) ATB shall obtain whatever consent that may be necessary from the TD Bank, Servicer, NCI or any other entity to give full effect to all of the foregoing; and (xiv) if any paragraph, provision or portions thereof in this agreement is by law rendered unenforceable or declared invalid or void for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining paragraphs, provisions, or portions thereof in this agreement and such unenforceable or invalid paragraph, provision or portion shall thereupon be severed from this agreement (one word at a time) by Mallico, as determined by it to be necessary, in order to render the remainder of this agreement enforceable and valid.

Capitalized terms herein, unless defined in this agreement differently, shall have the same meaning ascribed to them in the Loan Agreements. After execution of this agreement, we may, at our sole discretion, for ATB's optic requirements, prepare other detailed agreements that may reflect some or all of the contents herein in different forms, for presentation to you and execution by the parties; such detailed agreements may contain mutually acceptable additional provisions or modifications or terms different to the terms herein or may introduce new considerations and provided all such additions, changes or new terms (if any) are mutually acceptable and politically palatable to ATB then the parties herein agree to execute such detailed agreements as well. The terms herein shall supersede, and to the extent conflicting prevail, the terms of the Loan Agreements, and the Loan Agreements shall be deemed hereby amended to incorporate the terms of this agreement. The parties hereto shall, to the extent deemed reasonable by each of them, keep this agreement confidential and not surface same at least until the next provinciallywide Alberta provincial election is completed.

Yours truly,

WEST EDMONTON MALL PROPERTY INC.

Per: 

THE ABOVE IS CONFIRMED, AGREED TO AND ACCEPTED BY:  
PROVINCE OF ALBERTA TREASURY BRANCHES

Per: 

E.S. LEAHY  
SUPERINTENDENT