

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF 9670416 CANADA INC., WEWORK CANADA GP ULC,
AND WEWORK CANADA LP ULC**

**APPLICATION OF WEWORK INC. UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

Applicant

**FACTUM OF THE APPLICANT
(Application for Interim Stay Order)**

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PART I – INTRODUCTION

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act* (the “**CCAA**”) and section 106 of the *Courts of Justice Act* (the “**CJA**”) by WeWork Inc. (the “**WeWork Parent**”) as the proposed foreign representative of 9670416 Canada Inc., WeWork Canada GP ULC and WeWork Canada LP ULC (collectively, the “**Canadian Debtors**” and each a “**Canadian Debtor**”) for an interim stay of proceedings in connection with the chapter 11 proceedings (the “**Chapter 11 Cases**”) commenced by the WeWork Parent and certain of its affiliates (collectively, the “**Chapter 11 Debtors**”), including the Canadian Debtors, 700 2 Street Southwest Tenant LP, 4635 Lougheed Highway Tenant LP and 1090 West Pender Street Tenant LP (collectively, the “**Canadian Limited Partnerships**” and each a “**Canadian Limited Partnership**”, and, collectively, their business together with the business of the Canadian Debtors, the “**Canadian Business**”) and WeWork Companies U.S. LLC (the “**Real Property Obligor**”) in the United States Bankruptcy Court for the District of New Jersey (the “**U.S. Bankruptcy Court**”).¹

2. The Chapter 11 Debtors, including the Canadian Debtors, the Canadian Limited Partnerships and the Real Property Obligor (collectively, “**WeWork**” or the “**Company**” or the “**WeWork Group**”), are the global leader in flexible workspace that integrates community, member services, and technology. The WeWork Parent, the ultimate parent of WeWork’s global enterprise, is an American publicly-traded company headquartered in New York City, New York. The WeWork Parent trades on the New York Stock Exchange under the ticker “**WE**”.²

¹ Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of David Tolley sworn November 7, 2023 (the “**Tolley Affidavit**”) or the First Day Declaration sworn by David Tolley on November 7, 2023 (the “**First Day Declaration**”) attached, without exhibits, to the Tolley Affidavit as Exhibit “B”. Unless otherwise indicated, dollar amounts referenced in this affidavit are references to United States Dollars.

² Tolley Affidavit at para 6.

3. The Company operates approximately 770 locations in over 30 countries and is among the top commercial real estate lessors in business hubs including New York City, London, Dublin, Boston and Miami. In the United States, WeWork operates approximately 220 locations across the country. In Canada, WeWork operates 20 locations in Toronto, Vancouver, Burnaby, Calgary and Montreal.³

4. The Canadian Debtors, the Canadian Limited Partnerships and the Real Property Obligor are integrated members of the broader WeWork Group. WeWork Canada LP ULC (“**Canada LP ULC**”) is WeWork’s primary Canadian operating company and is a revenue generating entity. 700 2 Street Southwest Tenant LP (“**2 Street LP**”), 4635 Lougheed Highway Tenant LP (“**Lougheed Highway LP**”) and 1090 West Pender Street Tenant LP (“**West Pender Street LP**”) are limited partnerships formed under the laws of Ontario. 2 Street LP is a revenue generating entity. Lougheed Highway LP and West Pender Street LP are not revenue generating entities.⁴

5. The Canadian Business represents less than 3 percent of the total revenue of the WeWork Group, and less than 5 percent of the WeWork Group’s leased locations.⁵

6. Commencing on November 6, 2023 (the “**Petition Date**”), the Chapter 11 Debtors, including the Canadian Debtors, the Canadian Limited Partnerships and the Real Property Obligor, filed voluntary petitions for relief (the “**Petitions**”) under chapter 11 of title 11 of the United States Code (the “**U.S. Bankruptcy Code**”) in the U.S. Bankruptcy Court.⁶ The Chapter 11 Debtors expect to appear before the U.S. Bankruptcy Court in the coming days for a hearing (the “**First Day Hearing**”) to seek various first day orders pursuant to the U.S. Bankruptcy Code (the “**First**

³ Tolley Affidavit at para 7.

⁴ Tolley Affidavit at paras 8, 21, 50-52, 60 and 82.

⁵ Tolley Affidavit at paras 9 and 45.

⁶ Tolley Affidavit at para 2.

Day Orders”), including, among other things, an order appointing the WeWork Parent as the foreign representative of the Chapter 11 Cases (in such capacity, the “**Foreign Representative**”).⁷

7. At this time, the WeWork Parent, as the proposed Foreign Representative of the Chapter 11 Cases, is requesting an order from this Court granting a stay of proceedings (the “**Interim Stay**”) in respect of the Canadian Debtors, the Canadian Limited Partnerships and their respective directors and officers, and in respect of the Real Property Obligor (the “**Interim Stay Order**”). If the U.S. Bankruptcy Court grants the requested First Day Orders, the WeWork Parent anticipates returning before this Court to seek two additional orders:

- (a) an order (the “**Initial Recognition Order**”), among other things, (i) declaring the WeWork Parent as the Foreign Representative in respect of the Chapter 11 Cases and (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors; and
- (b) an order (the “**Supplemental Order**”), among other things, (i) recognizing certain First Day Orders, (ii) granting a stay of proceedings in respect of the Canadian Debtors, the Canadian Limited Partnerships and their respective directors and officers, and in respect of the Real Property Obligor in Canada, (iii) extending the protections and authorizations in the Supplemental Order to the Canadian Limited Partnerships, (iv) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as the information officer in respect of these proceedings (in such capacity, the “**Information Officer**”), (v) granting an administration charge over the assets and property of the Canadian Debtors and the Canadian Limited Partnerships in Canada

⁷ Tolley Affidavit at para 3.

in favour of Canadian counsel to the proposed Foreign Representative, the Information Officer and counsel to the Information Officer, and (vi) granting a directors' charge over the assets and property of the Canadian Debtors and the Canadian Limited Partnerships in Canada in favour of the directors and officers of the Canadian Debtors and the Canadian Limited Partnerships to secure the Canadian Debtors and the Canadian Limited Partnerships' indemnification obligations.

8. The WeWork Parent's application is proposed to proceed in stages. At the initial return date, the WeWork Parent will seek (a) the proposed Interim Stay Order and (b) the scheduling of the hearing for the Initial Recognition Order and the Supplemental Order following the U.S. Bankruptcy Court's First Day Hearing.

PART II – SUMMARY OF THE FACTS

A. WEWORK'S BUSINESS

(a) *WeWork's Products*

9. WeWork's customer base includes over 600,000 individuals and companies across six continents, from Fortune 500 companies to small start-ups. Customers can choose from a suite of WeWork services depending on their unique commercial needs.⁸

10. The vast majority of WeWork's revenue comes from its core, traditional "space-as-a-service" products, which offer members access to flexible workspace and related business amenities and services ("**WeWork Private Workspace**"). Flexibility is provided by offering Member Companies (as defined below) access to dedicated workspaces on a month-to-month or

⁸ Tolley Affidavit at para 31.

fixed term basis, and offers options including a dedicated desk, a private office, or a fully customized floor. Member Companies have the option to choose the type of membership that best fits their needs, with a range of flexible offerings that provide access on an hourly, daily, monthly-subscription basis or through a multi-year membership agreement.⁹

11. Member Companies can access a suite of amenities and services (such as dedicated community staff, private phone booths, internet access, high-speed business printers and copiers, mail and package handling, front desk services, coffee and other beverages, off-peak building access, unique common areas, WeWork-sponsored events and networking, and daily enhanced cleaning) and a host of business and technical service solutions, including, remote workforce solutions, connections to human resources benefits and professional services benefits, dedicated bandwidth, and IT equipment co location. WeWork offers these ancillary services and amenities to retain a diverse network of Member Companies, by catering to their unique demands all while delivering additional revenue and margin to the Company.¹⁰

12. WeWork has taken steps to make its real estate portfolio digitally accessible to a global customer base in the post-pandemic world. In 2020, WeWork launched WeWork On Demand (“**WeWork On Demand**”) and WeWork All Access (“**WeWork All Access**”, together, “**WeWork Access**,” and customers of WeWork Private Workspace and WeWork Access, the “**Member Companies**”):

- (a) WeWork All Access is a monthly subscription-based model that provides Member Companies with access to more than 500 participating WeWork locations. Through WeWork All Access, Member Companies looking for flexible workspace solutions

⁹ Tolley Affidavit at para 32.

¹⁰ Tolley Affidavit at para 33.

in major urban centers can book workspaces, conference rooms, and private offices from the convenience of their phones, giving users maximum flexibility to choose when, where, and how they work; and

- (b) WeWork on Demand is a pay-as-you-go membership that allows Member Companies to book individual workspace by the hour or conference rooms by the day on the WeWork mobile app. Since the successful pilot program launch in New York City in 2020, the WeWork on Demand offering has expanded across the United States, Canada, and select markets in the European and Pacific regions.¹¹

13. WeWork Workplace (“**WeWork Workplace**”) is a proprietary office management software and data analytics platform jointly developed with Yardi Systems, a leader in leading, financial, and asset management software, that allows subscribers to manage and optimize their workspaces, whether at a WeWork location or in a customer’s own offices, in exchange for a monthly licensing fee. In December 2021, WeWork signed its first enterprise deal to implement WeWork Workplace across locations in 34 cities. Since its official launch in July 2022, WeWork Workplace has attracted over 220 companies, with over 42,000 licenses sold as of December 2022.¹²

(b) WeWork’s Broad Global Presence

14. With a global presence in six continents and over 30 countries, WeWork is one of the largest flexible space providers in the world, operating approximately 43.9 million rentable square

¹¹ Tolley Affidavit at para 34.

¹² Tolley Affidavit at para 35.

feet globally, including 18.3 million rentable square feet in the United States and Canada as of December 2022.¹³

15. WeWork's international growth strategy has involved a combination of leasing and managing wholly-owned locations and also entering into joint ventures or franchise agreements in non-U.S. jurisdictions. Today, such arrangements support WeWork branded operations in Japan, China, Israel, Brazil, Mexico, Columbia, Chile, Argentina, Costa Rica, India and South Africa.¹⁴

(c) WeWork's Organizational Structure

16. An overview of the current organizational structure of the Chapter 11 Debtors is reflected in the Tolley Affidavit at Exhibit "A" attached thereto. Other than the two Netherlands entities, WW Worldwide C.V. and WeWork Companies (International) B.V., the United Kingdom Entity The We Company Worldwide Limited, and 9670416 Canada Inc., international entities are neither guarantors nor equity pledgers with respect to the LC Facility, the Secured Notes, or the Unsecured Notes (each as defined in the Tolley Affidavit).¹⁵

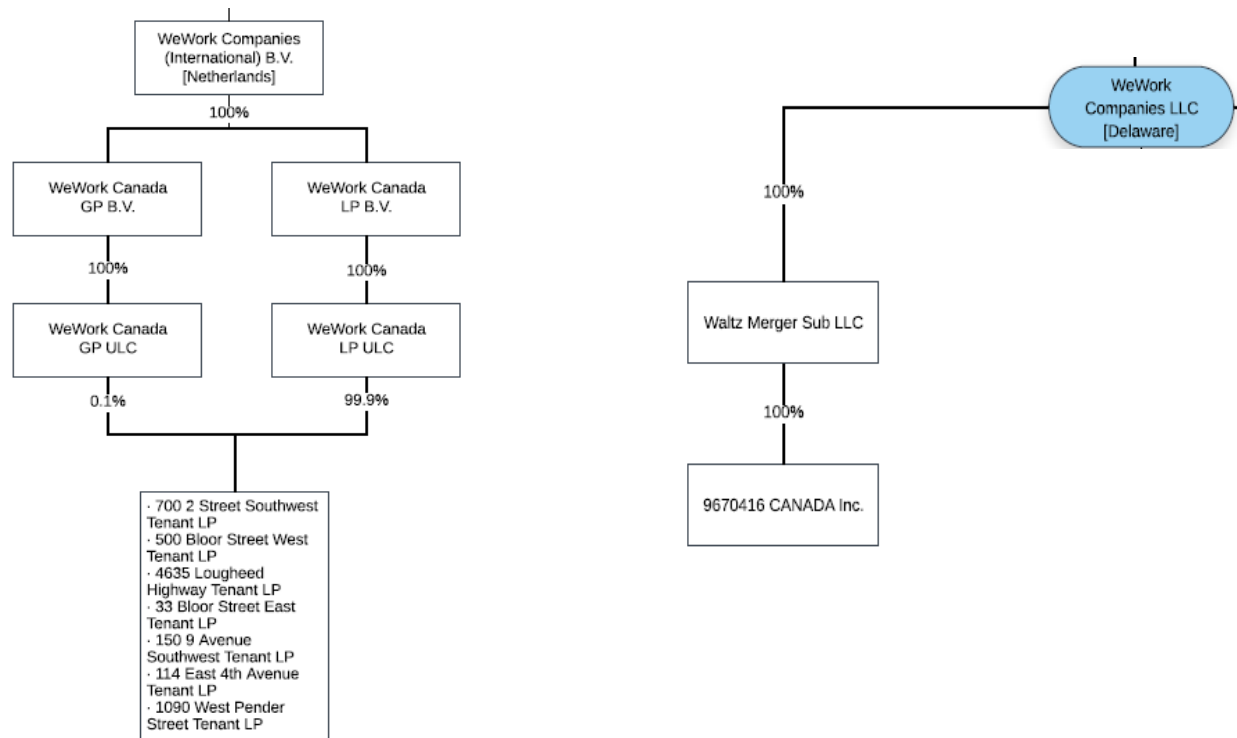
B. THE CANADIAN BUSINESS

17. An overview of WeWork Canada's organizational structure is reflected below.

¹³ Tolley Affidavit at para 36.

¹⁴ Tolley Affidavit at para 37.

¹⁵ Tolley Affidavit at para 38.



18. The Canadian Debtors consist of three entities:

- (a) 9670416 Canada Inc. (“**9670416**”) is a company incorporated under the laws of Quebec which holds assets in Canada, predominantly intercompany assets relating to its direct parent company, Waltz Merger Sub LLC. Sixty-five percent of the equity of 9670416 has been pledged as collateral under the LC Facility and the Secured Notes under respective New York-law security agreements, but not under local jurisdictional law documents. 9670416 is also a Chapter 11 Debtor; and¹⁶
- (b) WeWork Canada GP ULC (“**Canada GP ULC**”) and WeWork Canada LP ULC are unlimited liability corporations formed under the laws of Nova Scotia, each of which holds assets in Canada, and each of which is extra-provincially registered in Ontario, British Columbia, Alberta, and Quebec. Canada LP ULC is WeWork’s

¹⁶ Tolley Affidavit at paras 38, 44, 47 and 60(g).

primary operating company and primary revenue-generating entity in Canada. Canada LP ULC and the Real Property Obligor are co-defendants in litigation in Ontario. Canada GP ULC is a defendant in litigation in British Columbia. Each of Canada GP ULC and Canada LP ULC are Chapter 11 Debtors.¹⁷

19. Canada GP ULC and Canada LP ULC are the general partner and limited partner, respectively, of 2 Street LP, Loughheed Highway LP, and West Pender Street LP, each of which is a limited partnership formed under the laws of Ontario, and each of which holds assets (including leases and storage leases) in Canada. As discussed above, 2 Street LP is a revenue generating entity, while Loughheed Highway LP and West Pender Street LP are not revenue generating entities.¹⁸

20. The Real Property Obligor is a corporation incorporated under the laws of Delaware and is a guarantor for all lease obligations in Canada. The Real Property Obligor is also a co-defendant with Canada LP ULC in litigation in Ontario.¹⁹

21. The Canadian Limited Partnerships and the Real Property Obligor are not Canadian Debtors in these proceedings. However, the proposed Interim Stay Order provides an extension of the protections and authorizations in the proposed Interim Stay Order to the Canadian Limited Partnerships, and provides a stay of proceedings in respect of the Real Property Obligor, in each case to maintain the stability of the Company's business operations while it works with its key stakeholders to pursue a comprehensive global restructuring to position WeWork for sustainable, long-term growth.²⁰

¹⁷ Tolley Affidavit at paras 8, 44, 48-49 and 54.

¹⁸ Tolley Affidavit at paras 50-52.

¹⁹ Tolley Affidavit at paras 54 and 82.

²⁰ Tolley Affidavit at paras 53, 56 and 80-82.

C. WEWORK'S CAPITAL STRUCTURE

22. The funded debt obligations of the Company as of the Petition Date are summarized and described in detail in the Tolley Affidavit and the First Day Declaration, consisting predominantly of the LC Facility, Secured Notes, and Unsecured Notes. As of the Petition Date, the Chapter 11 Debtors have approximately \$4.2 billion in aggregate outstanding principal and accrued and unpaid interest for funded debt obligations, as reflected below.²¹

23. 9670416 has pledged 65 percent of its equity as collateral under the LC Facility and the Secured Notes under respective New York-law security agreements, but not under local jurisdictional law documents.²²

D. WEWORK'S FINANCIAL CHALLENGES

24. As described in detail in the Tolley Affidavit and the First Day Declaration, as the world emerged from the pandemic, WeWork was on the right track toward profitability. In 2022, total revenue increased by \$675 million, or 26 percent relative to 2021, primarily driven by an increase in total membership and service revenue, which in turn was primarily driven by a 17 percent increase in memberships to approximately 547,000 as of December 2022. Moreover, lease costs contractually paid or payable decreased by \$60 million, or 2 percent, pre-opening location expenses decreased by \$38 million, or 24 percent, location operating expenses decreased by \$171 million, or 6 percent, and, the selling, general and administrative expenses decreased by \$276 million, or 27 percent.²³

²¹ Tolley Affidavit at paras 39-42.

²² Tolley Affidavit at paras 38, 47 and 60(g).

²³ Tolley Affidavit at para 64.

25. Ultimately, WeWork's progress toward profitability was interrupted by a series of compounding factors, including, among other things:

(a) *Changing Commercial Real Estate Landscape.* Since late 2021, to curb inflation, central banks around the world have continuously raised interest rates. Policymakers in advanced economies have raised rates by approximately 400 basis points on average. The historically rapid rise in interest rates, in combination with slower than expected post-COVID return to office (discussed below), has pressured liquidity and driven increasing economic distress in the commercial real estate sector. As a result, commercial office space, especially in the large cities where WeWork operates, has become available and accessible at unprecedented prices and in significant volume. This amounts to much greater competition in WeWork's target market. Many of the Company's leases were entered into in a much stronger real estate market, and are characterized by above-market rents and fixed annual rent escalation without rent reset or lessee-friendly termination rights. Saddled with many of these unsustainable leases, WeWork's existing business model has become increasingly difficult to maintain and requires a reset to align with the current real estate market;

(b) *Slower Than Expected Return to Office.* While the supply of office space has surged, demand has receded as businesses continue to follow hybrid work policies first adopted in the pandemic. The slower-than-expected return to office among customers has led to a corresponding reduction in sales, revenue, and membership for WeWork. WeWork's membership numbers—even with a recent uptick—have not grown as a satisfactory rate. Despite an uptick in memberships to

approximately 682,000 in the fourth quarter of 2022, memberships have declined modestly to approximately 635,000 in the third quarter of 2023.²⁴

E. RESTRUCTURING PATH AND NEED FOR RELIEF

26. In light of the operational and economic challenges, in early 2023, WeWork retained legal and financial advisors to evaluate potential refinancing and restructuring options. WeWork has undertaken the following steps in pursuit of its restructuring path:

- (a) *March 2023 Recapitalization.* In March 2023, as discussed in detail in the Tolley Affidavit, WeWork, with the assistance of its advisors, negotiated a comprehensive recapitalization transaction (the “**Notes Exchange Transactions**”) with the Ad Hoc Group (as defined in the First Day Declaration, and which represented approximately 62 percent of the Unsecured Notes at the time) and SoftBank Group Corp. (“**SoftBank**”) and Cupar Grimmond, LLC (“**Cupar**”). As a result of the Notes Exchange Transactions, WeWork secured over \$1 billion of total funding and capital commitments, cancelled or equitized approximately \$1.5 billion of total debts through the equitization and discounted exchanges of over \$1 billion of secured and unsecured notes held by SoftBank, and the participating public noteholders (including the Ad Hoc Group) and extended the maturity of approximately \$1.9 billion of pro forma debts from 2025 to 2027;
- (b) *Enhanced Corporate Governance.* On August 8 2023, four experienced and disinterested directors – Paul Aronzon, Paul Keglevic, Elizabeth LaPuma, and Henry Miller (collectively, the “**Independent Directors**”) – were appointed as

²⁴ Tolley Affidavit at para 65.

independent directors to the WeWork Parent's Board of Directors (the "**Board**"). On August 17, 2023, in connection with its contingency planning efforts and in consultation with its advisors, the Board reviewed the Company's existing corporate governance infrastructure and determined that it was advisable and in the best interests of the Company and its stakeholders to establish a special committee of the Board comprising the Independent Directors to address any matters in which a conflict of interest exists;

- (c) *Prepetition Negotiations and the Restructuring Support Agreement.* After deleveraging the balance sheet and extending the maturity on its debts from the Notes Exchange Transactions, the Company engaged Hilco Real Estate, LLC ("**Hilco**") to accelerate its lease rationalization efforts on a global scale. Beginning in September of 2023, Hilco engaged with hundreds of landlords to secure amendments or exits to substantially all of the Company's real estate leases. Ultimately, however, the Company's finite liquidity did not provide the Company sufficient runway to complete an out-of-court rationalization of its lease portfolio, and the Company began to take steps to extend its liquidity while it negotiated a comprehensive restructuring transaction with parties in interest. As further described in the Tolley Affidavit, at the beginning of October 2023, the Company withheld (i) approximately \$95.2 million of interest payments on its 1L Notes, 2L Notes, 2L Exchangeable Notes, 3L Notes, and 3L Exchangeable Notes, approximately \$37.3 million of which was payable in cash and the remaining \$57.9 million were payable in kind; and (ii) approximately \$78 million of rent payments at certain locations across its lease portfolio, including approximately \$37 million in the United States and approximately \$41 million in international locations ((i)

and (ii) collectively, the “**Payment Withholding**”). Contemporaneously with its decision regarding the Payment Withholding, the Company began negotiations with key stakeholders across its capital structure, including SoftBank, the Ad Hoc Group and Cupar. As described in detail in the Tolley Affidavit and the First Day Declaration, WeWork, SoftBank, and the Ad Hoc Group have reached an agreement (the “**RSA**”) on the terms of a comprehensive restructuring transaction. The RSA is centered on the full equitization of the Company’s 1L Notes, 2L Notes, and the LC Facility and will reduce the Company’s funded debt by approximately \$3 billion. The RSA establishes certain case milestones to ensure that the Chapter 11 Cases proceed at an appropriate and efficient pace; and

- (a) *Lease Portfolio Rationalization.* To optimize their operations, WeWork intends to utilize the tools provided to them under the U.S. Bankruptcy Code to right-size their lease portfolio by identifying unprofitable locations for potential lease renegotiation or rejection and closure in both the United States and Canada. As rent payments are WeWork’s single most significant cash outflow, right-sizing the lease portfolio is essential to WeWork’s long-term business plan and profitability. In connection with the Chapter 11 Cases, WeWork will seek approval to reject a number of leases, including active leases, and leases that have already been restructured or terminated, for locations that the Company has determined to be unnecessary and burdensome to their estates. Rejection of these leases will reduce high fixed operational costs at vacated or underperforming locations and better position WeWork to conduct competitive operations at profit-driving locations going forward. WeWork, with the assistance of its advisors, will continue negotiations with its landlords with respect to the potential restructuring of existing

lease terms. As of the Petition Date, Hilco is in active negotiations with over 400 landlords to consummate lease amendment agreements. Although ongoing, WeWork is hopeful that these negotiations will lead to further lease concessions and modifications that will allow the Company to reduce fixed costs, focus on other more profitable locations, and secure the foundation of long term profitability.²⁵

27. The Chapter 11 Cases will be the primary forum in which the Company will seek to complete a global restructuring of its funded indebtedness, rationalize its lease portfolio, and right-size the balance sheet.

28. The Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor are integrated members of the broader WeWork Group that is centrally managed from a strategic and financial perspective by WeWork's senior leadership located in the United States.²⁶

29. As discussed above, the Canadian Business represents less than 3 percent of the total revenue of the WeWork Group, and less than 5 percent of the WeWork Group's leased locations.²⁷

PART III – ISSUES AND THE LAW

30. The issues to be considered on this application are:

- (a) whether Ontario is a proper jurisdiction for these recognition proceedings; and
- (b) whether this Court should grant the proposed Interim Stay Order providing for the proposed Interim Stay and other ancillary relief, including a stay of proceedings in respect of the Canadian Debtors, the Canadian Limited Partnerships and their respective directors and officers, and in respect of the Real Property Obligor, and an extension of the protections and authorizations in the proposed Interim Stay

²⁵ Tolley Affidavit at paras 66-74.

²⁶ Tolley Affidavit at paras 8, 10, 21 and 60-61.

²⁷ Tolley Affidavit at paras 9, 45 and 60(d).

Order to the Canadian Limited Partnerships pending the determination of the WeWork Parent's application for the Initial Recognition Order and the Supplemental Order.

31. As noted above, if the U.S. Bankruptcy Court grants the requested First Day Orders, the WeWork Parent anticipates returning before this Court to request that this Court consider:

- (a) whether this Court should grant the Initial Recognition Order, including:
 - (i) recognition of the WeWork Parent as the Foreign Representative in respect of the Chapter 11 Cases;
 - (ii) recognition of the Chapter 11 Cases as a "foreign main proceeding" in respect of the Canadian Debtors pursuant to Part IV of the CCAA; and
- (b) whether this Court should grant the relief sought in the Supplemental Order, including:
 - (i) recognition of certain First Day Orders issued by the U.S. Bankruptcy Court;
 - (ii) a stay of proceedings in respect of the Canadian Debtors, the Canadian Limited Partnerships and their respective directors and officers, and in respect of the Real Property Obligor;
 - (iii) extending the protections and authorizations in the Supplemental Order to the Canadian Limited Partnerships;
 - (iv) appoint A&M as Information Officer; and
 - (v) grant the Administration Charge and D&O Charge on the Property (as defined in the Supplemental Order) of the Canadian Debtors and the Canadian Limited Partnerships.

32. For the reasons set out below, the WeWork Parent submits that it is necessary and appropriate for this Court to grant the relief sought on this application to give effect to the Chapter 11 Cases in Canada and to preserve the value of the Canadian Debtors, the Canadian Limited

Partnerships, and the Canadian Business while the Company pursues its comprehensive restructuring efforts in the Chapter 11 Cases.

B. ONTARIO IS A PROPER JURISDICTION

33. The WeWork Parent submits that Ontario is a proper jurisdiction for these recognition proceedings in Canada. Part IV of the CCAA does not contain any provisions with respect to the jurisdiction of a particular court to hear a recognition application. The WeWork Parent submits that it is appropriate for this Court to take jurisdiction with respect to this recognition application given the substantial connection of the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor to Ontario, including the following:²⁸

- (a) all of the Canadian Limited Partnerships are registered in Ontario;
- (b) Canada GP ULC and Canada LP ULC are extra-provincially registered in Ontario and are the general partner and limited partner, respectively, of the Canadian Limited Partnerships, which are all registered in Ontario;
- (c) there are as many or more WeWork Group leases in Ontario than in any other province;
- (d) pursuant to Ontario law governed documents, the Real Property Obligor is a guarantor of all WeWork Group leases held in Ontario;
- (e) the Real Property Obligor is a co-defendant with Canada LP ULC to litigation in Ontario;
- (f) 21 of 59 employees, 35 percent of total WeWork Canadian employees, are located in Ontario;
- (g) the Foreign Representative Order (as defined below), if granted in the Chapter 11 Cases, will specifically authorize the WeWork Parent to make an application for

²⁸ [*Paladin Labs Canadian Holding Inc.*, 2022 ONSC 4748](#) at paras 16-17 [*Paladin Interim Stay Endorsement*].

recognition of the Chapter 11 Cases before the Ontario Superior Court of Justice (Commercial List).²⁹

C. THE INTERIM STAY ORDER

(a) *An Interim Stay is Appropriate*

34. The Chapter 11 Debtors commenced the Chapter 11 Cases in the U.S. Bankruptcy Court by electronically filing the Petitions, resulting in an automatic stay of proceedings in respect of the Chapter 11 Debtors (including the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor) in the United States. As noted above, the Chapter 11 Debtors expect to be before the U.S. Bankruptcy Court in the coming days to seek entry of the First Day Orders, including an order recognizing the WeWork Parent as the Foreign Representative of the Chapter 11 Cases (the “**Foreign Representative Order**”). As such, there will be a period of time between the commencement of the Chapter 11 Cases and the time when the WeWork Parent is able to file the certified materials contemplated by subsection 46(2) of the CCAA and return to this Court as the formally-appointed Foreign Representative seeking the relief sought in the Initial Recognition Order and the Supplemental Order.³⁰

35. The proposed Interim Stay provides a stay of proceedings in favour of the Canadian Debtors and their respective directors and officers, as well as the property and business of the Canadian Debtors located in Canada. It is a temporary measure necessary to give effect in Canada to the automatic stay of proceedings arising under the U.S. Bankruptcy Code upon the filing of the Petitions and to provide stability and protect the value and operations of the Canadian Business until the Foreign Representative Order has been issued in the Chapter 11 Cases and the WeWork

²⁹ Tolley Affidavit at paras 3, 8, 45, 48-52, 54, 57-58 and 82.

³⁰ Tolley Affidavit at paras 3, 21, 77 and 79.

Parent (then, as the official Foreign Representative) is in a position to return to this Court to seek the Initial Recognition Order and the Supplemental Order.³¹

36. It is important for the Canadian Debtors to be immediately protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order.³²

37. This Court frequently grants interim orders providing for a temporary stay of proceedings in Canada following the initiation of Chapter 11 Cases in recognition of the fact that such a stay is necessary to protect the assets of the debtors and to enable them to implement a coordinated cross-border restructuring through the Chapter 11 process.³³

38. As recognized by Justice Cavanagh in the *Knotel Interim Stay Endorsement*, the Court has the jurisdiction to grant an interim stay in the context of a pending recognition application pursuant to section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction.³⁴ Section 106 of the CJA states: “A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.”³⁵

39. Recently, this Court in *Paladin Labs Inc.* and *YRC Freight Canada Company (Re)* granted similar interim stays. In *Paladin*, Chief Justice Morawetz concluded that granting the interim stay and other relief as proposed in the interim order was “in accordance with the principles of

³¹ Tolley Affidavit at paras 4, 21 and 80.

³² Tolley Affidavit at para 81.

³³ [*GNC Holdings, Inc. Re* \(24 June 2020\), Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Endorsement of Koehnen J](#) at paras 3-4 and 6; [*Lightsquared LP, Re*, 2012 ONSC 2994](#) at para 3; [*Sungard Availability Services \(Canada\) Ltd, Re* \(11 April 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00679628-00CL \(Endorsement of Conway J\)](#) and [*Knotel Canada, Inc. Re* \(9 March 2021\), Toronto, Ont Sup Ct J \[Commercial List\] CV-21-00658434-00CL \(Endorsement of Cavanagh J\)](#) [*Knotel Interim Stay Endorsement*].

³⁴ [*Knotel Interim Stay Endorsement*](#) at para 3.

³⁵ [CJA](#), s [106](#).

cooperation and comity” and within the Court’s jurisdiction. The Court concluded that the relief was both necessary and appropriate.³⁶

40. Accordingly, it is respectfully submitted that the granting of the proposed Interim Stay and the other relief in the proposed Interim Stay Order is in accordance with the principles of cooperation and comity, within the Court’s jurisdiction, consistent with this Court’s practice in recent Part IV recognition proceedings, and important for the preservation of the value of the Canadian Business and WeWork’s broader restructuring efforts.

41. Together, the Canadian Business is comprised of: (i) three “debtor companies” within the meaning of the CCAA (which are the Canadian Debtors discussed above, being 9670416, Canada GP ULC, and Canada LP ULC); and (ii) three limited partnerships (which are the Canadian Limited Partnerships discussed above and below, being 2 Street LP, Lougheed Highway LP, and West Pender Street LP. Additionally, one US affiliate, being the Real Property Obligor (WeWork Companies U.S. LLC) has various obligations in Canada.³⁷

42. As and for the reasons discussed above, it is appropriate to grant stay protection under the proposed Interim Stay Order to the Canadian Debtors as “debtor companies” to which the CCAA and Part IV thereof applies. As and for the reasons discussed below in paragraphs 43 to 46, it is appropriate to also extend that same stay protection (and other protections) to the Canadian Limited Partnerships under the well-settled *Lehndorff* principles for extending CCAA protection to partnerships (to which the CCAA does not otherwise apply, by its terms). As and for the reasons discussed below in paragraphs 47 to 51, it is appropriate to also extend that same stay protection

³⁶ [*Paladin Interim Stay Endorsement*](#), *supra* at para 20; [*YRC Freight Canada Company \(Re\)*, 2023 ONSC 4492](#) at paras 10-11 and 16 [*YRC Interim Stay Endorsement*].

³⁷ Tolley Affidavit at paras 1, 44, 47-52 and 54.

to the Real Property Obligor under section 49(1) and 52 of the CCAA and section 106 of the CJA, as has been done in each case in many prior CCAA reorganizations.

(b) *The Interim Stay Order protections should be extended to the Canadian Limited Partnerships*

43. The proposed Interim Stay Order includes an extension of the relief granted in the proposed Interim Stay Order, including a stay of proceedings, to the Canadian Limited Partnerships. The CCAA expressly applies to companies, but not to partnerships. However, the Court has broad inherent jurisdiction to impose stays of proceedings that supplement the statutory provisions of section 11 of the CCAA, providing the Court with the power to extend the protections and authorizations and grant a stay of proceedings where it is just and reasonable to do so, including with respect to non-applicant parties.³⁸

44. Courts have frequently exercised their inherent jurisdiction to extend the scope of the CCAA proceedings to encompass partnerships, including in circumstances where, among other things: (a) the operations of the partnership are closely related to the business of the applicants; (b) the obligations of the partnerships are so intertwined with those of the applicants that a successful restructuring would not be possible absent a stay of enforcement actions against the partnerships; (c) it is necessary to ensure that the purposes of the CCAA can be achieved; and (d) it is just and reasonable or just and convenient to do so.³⁹

³⁸ Tolley Affidavit at paras 4, 21, 53, 56, 80 and 82; *Re Lehndorff General Partners Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div.) at paras. 5, 16 and 21 [Lehndorff].

³⁹ *Lehndorff*, *supra* at paras. 5, 16 and 21; *Cinram International Inc., Re*, 2012 ONSC 3767 at para 37 and Sch. C at para 64; *Target Canada Co., Re*, 2015 ONSC 303 at para 42; *4519922 Canada Inc., Re*, 2015 ONSC 124 at para 37; *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422 <https://www.alvarezandmarsal.com/sites/default/files/canada/FINAL-Endorsement-ONSC-1014-Feb-10.pdf> at para 30.

45. The WeWork Parent submits that it is just and appropriate to extend the relief, protections and authorizations in the proposed Interim Stay Order to the Canadian Limited Partnerships because:

- (a) each of the Canadian Limited Partnerships are Chapter 11 Debtors;
- (b) the general partner and limited partner of each of the Canadian Limited Partnerships are Canadian Debtors;
- (c) each of the Canadian Limited Partnerships hold assets in Canada, including leases and storage leases;
- (d) 2 Street LP is a revenue generating entity in the WeWork Group; and
- (e) if any enforcement proceedings were commenced against the Canadian Limited Partnerships, it would cause disruption to the WeWork Group and defeat the purpose of obtaining CCAA protection to preserve the stability of the corporate group.⁴⁰

46. In the absence of extending proposed Interim Stay Order to the Canadian Limited Partnerships, the Company's management team would be required to expend time and effort addressing the foregoing risks rather than working to address the Company's urgent need to rationalize their lease portfolio, right-size the balance sheet, and execute a comprehensive global restructuring with the Company's key stakeholders. The extension of CCAA protection, including, among other things, a stay of proceedings to the Canadian Limited Partnerships will provide stability to the WeWork Group and enable it to pursue a value-maximizing global restructuring in an orderly manner.⁴¹

⁴⁰ Tolley Affidavit at paras 8, 47-52 and 82.

⁴¹ Tolley Affidavit at paras 20-21, 56, 80, 72 and 83.

(c) *The Stay of Proceedings should be extended to the Real Property Obligor*

47. In addition to the stay of proceedings in respect of the Canadian Debtors and the Canadian Limited Partnerships, the proposed Interim Stay Order provides for a stay of proceedings in Canada in favour of the Real Property Obligor, which is a Delaware limited liability company, a guarantor of leases in Canada, and a co-defendant to litigation in Ontario.⁴²

48. The proposed stay in favour of the Real Property Obligor is intended to give effect in Canada to the U.S. Bankruptcy Code stay of proceedings and to enable the Company to focus on its restructuring efforts rather than incurring time and resources to defend itself in the event of potential enforcement proceedings against the Real Property Obligor in Canada.⁴³

49. This Court has the jurisdiction to grant a stay with respect to non-applicant debtor companies. In the context of a recognition proceeding, the Court's jurisdiction arises from its authority under subsection 49(1) of the CCAA and pursuant to section 106 of the CJA. A stay of proceedings is also consistent with the principles of comity and cooperation embodied in section 52 of the CCAA. The Court has regularly exercised this jurisdiction to extend a stay to non-applicant parties, both in the context of Part IV proceedings and in plenary CCAA proceedings, "where it is important to the reorganization and restructuring process, and where it is just and reasonable to do so".⁴⁴

50. When determining whether to extend a stay of proceedings to non-applicant parties, the Court has considered, among other things:

⁴² Tolley Affidavit at paras 4, 21, 54, 56 and 82.

⁴³ Tolley Affidavit at paras 21, 56 and 81-82.

⁴⁴ [*Tamerlane Ventures Inc. Re*, 2013 ONSC 5461](#) at para 21; [*Pacific Exploration & Production Corp. Re*, 2016 ONSC 5429](#) at para 26; [*Paladin Interim Stay Endorsement*](#), *supra* at paras 24-25; [*YRC Interim Stay Endorsement*](#), *supra* at paras 14-16.

- (a) whether the business and operations of the third party was significantly intertwined and integrated with those of the debtor company;
- (b) whether extending the stay to the third party would help maintain stability and value during the restructuring process;
- (c) if not extending the stay to the third party would have a negative impact on the debtor company's ability to restructure;
- (d) if the debtor company is prevented from concluding a successful restructuring with its creditors, whether the economic harm would be far-reaching and significant; and
- (e) whether the balance of convenience favours extending the stay to the third party.⁴⁵

51. The WeWork Parent submits that the balance of convenience favours granting the stay of proceedings in favour of the Real Property Obligor, as a Chapter 11 Debtor, as such protection is important to preserving overall stability, and allowing the Company to focus its efforts on pursuing a comprehensive restructuring in the Chapter 11 Cases. To not extend the stay would potentially have a negative impact on the ability of the Canadian Debtors and the Canadian Limited Partnerships to preserve value of the Canadian Business, which is intertwined with the overall business of the Company. As such, it is important and appropriate that the proposed Interim Stay be extended to the Real Property Obligor.⁴⁶

52. Overall, it is important and appropriate to grant stay protection to the Canadian Debtors, the Canadian Limited Partnerships, and the Real Property Obligor and to commence these Part IV recognition proceedings in respect of the Canadian Business because, although small in relative scope to the overall US and international scope of the business (as discussed above, the Canadian Business represents less than 3 percent of the total revenue of the WeWork Group, and less than 5

⁴⁵ *JTI-Macdonald Corp, Re*, 2019 ONSC 1625 at para 15.

⁴⁶ Tolley Affidavit at paras 21, 56 and 81-82.

percent of the WeWork Group's leased locations), it is important that the WeWork Group be able to advance its overall, comprehensive restructuring plan within the main Chapter 11 Cases, and that the Canadian Business be protected and part of that process through these ancillary Part IV recognition proceedings.⁴⁷

PART IV– RELIEF REQUESTED

53. The WeWork Parent requests that the Court grant (a) the proposed Interim Stay Order on an urgent basis, and (b) schedule a hearing for the Initial Recognition Order and the Supplemental Order following the First Day Hearing of the U.S. Bankruptcy Court, in each case substantially in the form attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of November, 2023.

Goodmans LLP

Goodmans LLP

⁴⁷ Tolley Affidavit at paras 9, 21, 45, 56 and 81-83.

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Paladin Labs Canadian Holding Inc.</i>, 2022 ONSC 4748
2.	<i>GNC Holdings, Inc.</i>, Re (24 June 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Endorsement of Koehnen J)
3.	<i>Lightsquared LP</i>, Re, 2012 ONSC 2994
4.	<i>Sungard Availability Services (Canada) Ltd.</i>, Re (11 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Endorsement of Conway J)
5.	<i>Knotel Canada, Inc.</i>, Re (9 March 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00658434-00CL (Endorsement of Cavanagh J)
6.	<i>YRC Freight Canada Company (Re)</i>, 2023 ONSC 4492
7.	<i>Re Lehndorff General Partners Ltd.</i> (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div.)
8.	<i>Cinram International Inc.</i>, Re, 2012 ONSC 3767
9.	<i>Target Canada Co.</i>, Re, 2015 ONSC 303
10.	<i>4519922 Canada Inc.</i>, Re, 2015 ONSC 124
11.	<i>Nordstrom Canada Retail, Inc.</i>, 2023 ONSC 1422
12.	<i>Tamerlane Ventures Inc.</i>, Re, 2013 ONSC 5461
13.	<i>Pacific Exploration & Production Corp.</i>, Re, 2016 ONSC 5429
14.	<i>JTI-Macdonald Corp.</i>, Re, 2019 ONSC 1625

SCHEDULE B
STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

[s. 2\(1\)](#)

In this Act,

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent.

[s. 11](#)

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[s. 11.02\(1\)](#)

A court may on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[s. 11.02\(2\)](#)

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[s. 45\(1\)](#)

“Foreign Main Proceeding”

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

“Foreign Proceeding”

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

“Foreign Representative”

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

[s. 46\(1\)](#)

A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

[s. 46\(2\)](#)

Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

[s. 46\(3\)](#)

The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

[s. 46\(4\)](#)

In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

[s. 49\(1\)](#)

If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

[s. 52\(1\)](#)

If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

[s. 52 \(2\)](#)

If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

[s. 52 \(3\)](#)

For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

COURTS OF JUSTICE ACT
R.S.O. 1990, c. C.43, as amended

[s. 106](#)

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

Court File No. _____

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

AND IN THE MATTER OF 9670416 CANADA INC., WEWORK CANADA GP ULC AND WEWORK CANADA LP ULC

APPLICATION OF WEWORK INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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(Application Returnable November 7, 2023)**

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