

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

BOOK OF AUTHORITIES OF THE RECEIVER
(MOTION RETURNABLE NOVEMBER 18, 2026)

September 25, 2026

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INDEX

TAB	DOCUMENTS	PAGE NO.
1	<i>A. Dynasty Roofing (Windsor) Ltd. v. Marathon Construction Services (1991) Inc.</i>, 2002 CarswellOnt 1734, 114 A.C.W.S. (3d) 52 (Ont. S.C.J.)	01
2	<i>A. Dynasty Roofing (Windsor) Ltd. v. Marathon Construction Services (1991) Inc.</i> 2003 CarswellOnt 4045, 126 A.C.W.S. (3d) 247 (Ont. C.A.)	06
3	<i>CFFI Ventures Inc. (Re.)</i>, 2026 NSSC 195 and Order of Justice Keith, June 30, 2026	09
4	<i>Ela Capital Inc. v. 11157353 Canada Corp.</i>, CV-23-00694886-00CL, Order of Justice Osborne, February 21, 2023 (Ont. S.C.J., Commercial List)	18
5	<i>Greenfire Resources Operating Corporation v. Viceroy Canadian Resources Corp.</i>, 2401-13217, Order of Justice Harris, December 6, 2024 (Ab. K.B.)	40
6	<i>In re. Tacora Resources Inc.</i>, CV-23-00797394-00CL, Order of Justice Kimmel, June 5, 2024 (Ont. S.C.J., Commercial List)	67

7	<i>In re. 11440346 Canada Inc. et al., BK-25-00000237-0033, Order of Justice Kershman, April 29, 2025 (Ont. S.C.J.)</i>	92
8	<i>Kingsett Mortgage Corporation et al. v. Vandyk-Uptowns Limited et al, CV-23-00709180-00CL, Order of Justice Myers, January 15, 2026 (Ont. S.C.J., Commercial List)</i>	114
9	<i>National Bank of Canada v. R-Chad Investment Inc., CV-25-00091460-0000, Order of Justice Krawchenko, January 29, 2026 (Ont. S.C.J.)</i>	140
10	<i>Nydig ABL LLC v. IE CA3 Holdings Ltd. et al, S230488, Order of Justice Milman, June 13, 2023 (B.C.S.C.)</i>	155
11	<i>Pillar Capital Corp. v. Turuss (Canada) Industry Co. Ltd., CV-20-00646729-00CL, Order of Justice Koehnen, April 14, 2021 (Ont. S.C.J., Commercial List)</i>	230
12	<i>R. v. Ron Engineering & Construction (Eastern) Ltd., [1981] 1 S.C.R. 111, 1981 CarswellOnt 109 (S.C.C.)</i>	247
13	<i>Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd., 10 C.L.R. (2d) 128, 1993 CarswellOnt 815 (Ont. C.J. (Gen. Div. [Div. Ct.])))</i>	257
14	<i>Western Plumbing & Heating Ltd. v. Industrial Boiler-Tech Inc., 1999 CarswellNS 291, 180 N.S.R. (2d) 41 (N.S. Sup. Ct.)</i>	272

TAB 1

2002 CarswellOnt 1734
Ontario Superior Court of Justice

A. Dynasty Roofing (Windsor) Ltd. v. Marathon Construction Services (1991) Inc.

2002 CarswellOnt 1734, [2002] O.J. No. 2065, 114 A.C.W.S. (3d) 52, 16 C.L.R. (3d) 43

**A. Dynasty Roofing (Windsor) Ltd., Plaintiff and
Marathon Construction Services (1991) Inc., Defendant**

Quinn J.

Heard: February 25-26, 2002
Judgment: March 11, 2002
Docket: Windsor 99/GS-46265

Counsel: *C. Martini*, for Plaintiff
A. Farlam, for Defendant

Subject: Contracts

Related Abridgment Classifications

Construction law

II Contracts

II.1 Building contracts

II.1.a Execution of formal contract

II.1.a.i Tendering process

II.1.a.i.C Relation of subcontractor to contractor

Headnote

Construction law --- Building contract — Execution of formal contract — Tendering process — Relation of subcontractor to contractor

Defendant was general contractor and bid on contract for construction of industrial building — Plaintiff was roofing subcontractor and bid \$198,500 for roofing component of contract — Plaintiff's bid was lowest received by defendant and defendant named plaintiff and another roofing contractor, SM, in its own bid to owner — In own bid, defendant allocated \$195,000 for roofing work — When defendant was awarded general contract, it offered plaintiff roofing work for \$195,000 and when plaintiff refused to do work for less than its own bid of \$198,500, defendant offered work to SM for \$195,000 which was accepted — Plaintiff brought action seeking damages for breach of contract — Action allowed — Parties were involved in formal bidding process and what occurred was not merely request for prices by defendant, as it claimed — Contract was entered into between parties in relation to bidding process — Parties entered into contract through bidding process with implied terms that bid would be irrevocable, plaintiff would perform work at bid price and lowest bidder would be offered contract — Defendant's conduct created sham of bidding process — Defendant had not shown any reasonable cause for rejecting lowest bid and therefore it was in breach of contract with plaintiff — Plaintiff was entitled to damages for lost profit and overhead plus figure reflecting work interruptions and unforeseen problems, for total judgment in amount of \$73,220.

Table of Authorities

Cases considered by *Quinn J.*:

M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd., 170 D.L.R. (4th) 577, 237 N.R. 334, 44 C.L.R. (2d) 163, 232 A.R. 360, 195 W.A.C. 360, 1999 CarswellAlta 301, 1999 CarswellAlta 302, [1999] 1 S.C.R. 619, [1999] 7 W.W.R. 681, 69 Alta. L.R. (3d) 341, 3 M.P.L.R. (3d) 165, 49 B.L.R. (2d) 1, 15 Const. L.J. 455, 2 T.C.L.R. 235 (S.C.C.) — considered *R. v. Ron Engineering & Construction (Eastern) Ltd.*, 13 B.L.R. 72, 119 D.L.R. (3d) 267, [1981] 1 S.C.R. 111, (sub nom. *Ron Engineering & Construction (Eastern) Ltd. v. Ontario*) 35 N.R. 40, 1981 CarswellOnt 109, 1981 CarswellOnt 602 (S.C.C.) — considered

Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd., 15 C.L.R. (2d) 10, 1993 CarswellOnt 815 (Ont. Div. Ct.)
— considered

ACTION by subcontractor against general contractor for damages for breach of contract.

Quinn J.:

1 The plaintiff brings this action against the defendant for damages for breach of contract.

2 The defendant in January 1999 was a general contractor and bid on a contract for the construction of an industrial building. The plaintiff in January 1999 was a roofing contractor and in response to the defendant's request prepared and submitted a bid for the roofing component of the industrial building. The approximate cost of the building contract was \$16,000,000. The plaintiff's bid for the roofing component was \$198,500. The plaintiff's bid for the roofing work was the lowest of eight received by the defendant. There were no terms relevant to the bidding process in the owner's specifications. The defendant's bid was successful and the defendant was awarded the contract to construct the industrial building. The defendant in its bid to the owner had named the plaintiff and one Smith Peat as roofing contractors it would use if its bid was successful. The defendant had allocated \$195,000 in its bid for the roofing work. Mr. Gignac for the defendant testified that as all general contractors received the same bids from subcontractors, the defendant's practice was to reduce the lowest subcontractor's bid in order to attain a bidding advantage over the other general contractors. Smith Peat's bid was \$208,840. Smith Peat was included in the defendant's bid because Smith Peat told the defendant it would be flexible with its bid as it had in the past. Shortly after the defendant was awarded the general contract Mr. Gignac contacted the plaintiff and offered the plaintiff the roofing contract at a price of \$195,000. The plaintiff refused to do the work for any amount less than their bid (i.e. \$198,500). The defendant then offered the roofing contract to Smith Peat at a cost of \$195,000 and they accepted.

3 The issue is whether the bidding process resulted in a contract which obligated the defendant to offer the roofing contract to the plaintiff (the lowest bidder) at the plaintiff's bid price absent any other reasonable cause to reject the plaintiff as subcontractor.

4 The defendant argued that there was no contract as its solicitation to roofing contractors was a request for prices and not a bid competition. The facts do not support the defendant's argument. The plaintiff and Smith Peat both took steps to qualify themselves as subcontractors with the owner as required by the general contract (see Exhibit 1, Tab 8). The owner had to approve subcontractors prior to tender. The plaintiff had to review the plans and specifications in order to submit a quote. The plaintiff's quote was the lowest price submitted. The plaintiff's name and quote were included in the defendant's tender to the owner as a roofing contractor the defendant may use. The plaintiff was the first roofing contractor offered the roofing contract. The defendant did not prepare its own bid for the roofing work. There was a closing date for all price quotes to be in the owner's hands. The general contract provided instructions to all bidders. (Exhibit 1, Tab 7). The unit price request and response (Exhibit 1, Tab 11) clearly reference a tender. Mr. Gignac testified that he expected the subcontractor to honour its bid price if accepted and the lowest subcontractor's bid usually was included in the defendant's bid. Smith Peat wrote to John Gignac (Exhibit 5) enclosing material that would allow them to be placed on the bidders list for the roofing job.

5 I find on these facts that the plaintiff and the defendant were involved in a formal bidding process and what occurred was not a request for prices by the defendant.

6 I also find on these facts that a contract was entered into between the plaintiff and the defendant in relation to the bidding process. The defendant solicited bids from roofing subcontractors. The plaintiff responded after pricing the work set out in the plans and specifications with a bid of \$198,500. The plaintiff in submitting its bid undertook that the bid would be irrevocable for a reasonable period of time and that the plaintiff would do the work for the price quoted. The defendant on the other hand undertook that it would abide by the bidding process and offer the contract to the lowest bidder provided there was no reasonable cause to reject the lowest bidder.

7 Mr. Justice Estey in *R. v. Ron Engineering & Construction (Eastern) Ltd.* (1981), 119 D.L.R. (3d) 267 (S.C.C.), at 274 stated:

The tender submitted by the respondent brought contract A into life. This is sometimes described in law as a unilateral contract, that is to say a contract which results from an act made in response to an offer, as for example in the simplest terms, "I will pay you a dollar if you will cut my lawn". No obligation to cut the lawn exists in law and the obligation to pay the dollar comes into being upon the performance of the invited act. Here the call for tenders created no obligation in the respondent or in anyone else in or out of the construction world. When a member of the construction industry responds to the call for tenders, as the respondent has done here, that response takes the form of the submission of a tender, or a bid as it is sometimes called. The [page275] significance of the bid in law is that it once becomes irrevocable if filed in conformity with the terms and conditions under which the call for tenders was made and if such terms so provide. There is no disagreement between the parties here about the form and procedure in which the tender was submitted by the respondent and that it complied with the terms and conditions of the call for tenders. Consequently, contract A came into being. The principal term of contract is the irrevocability of the bid and the corollary term is the obligation in both parties to enter into a contract (contract B) upon the acceptance of the tender. Other terms include the qualified obligations of the owner to accept the lowest tender and the degree of this obligation is controlled by the terms and conditions established in the call for tenders.

And a p.273 he stated:

I share the view expressed by the Court of Appeal that integrity of the bidding system must be protected where under the law of contracts it is possible to do so.

8 Madame Justice Charron in *Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd.*, [1993] O.J. No. 3005 (Ont. Div. Ct.) ruled that the bidding contract referred to by Mr. Justice Estey between owner and general contractor also applied to general contractor and subcontractor.

9 In the case of *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.* (1999), 170 D.L.R. (4th) 577 (S.C.C.), at 593 Mr. Justice Iacobucci stated:

The rationale for the tendering process, as can be seen from these documents, is to replace negotiation with competition. This competition entails certain risks for the appellant. The appellant must expend effort and incur expense in preparing its tender in accordance with strict specifications and may nonetheless not be awarded Contract B. It must submit its Bid Security which, although it is returned if the tender is not accepted, is a significant amount of money to raise and have tied up for the period of time between the submission of the tender and the decision regarding Contract B. As Bingham L.J. stated in *Blackpool and Fylde Aero Club Ltd.*, *supra*, at p.30, with respect to a similar tendering process, this procedure is "heavily weighted in favour of the invitor". It appears obvious to me that exposing oneself to such risks makes little sense if the respondent is allowed, in effect, to circumscribe this process and accept a non-compliant bid. Therefore I find it reasonable, on the basis of the presumed intentions of the parties, to find an implied term that only a compliant bid would be accepted.

10 The defendant's conduct supports my finding that the parties entered into a contract with implied terms that the bid would be irrevocable, the plaintiff would perform the work at the bid price and the lowest bidder would be offered the contract. The defendant solicited bids for the roofing work, the defendant received eight bids, the plaintiff's bid was the lowest, the plaintiff's bid was used in the defendant's bid to the owner, the plaintiff was offered the contract to do the roofing work and Mr. Gignac testified that he expected subcontractors to honour their bids after the defendant received the contract from the owner.

11 The defendant's conduct created a sham of the bidding process. The defendant used the lowest bid to arrive at a lower figure which it 'shopped' to the plaintiff and then Smith Peat. Mr. Gignac for the defendant testified that in the industry the lowest bidder would normally be awarded the contract and that the successful bidder was obliged to carry out the work at the bid price. The defendant acknowledged that the lowest bidder should be awarded the contract by offering the contract to the plaintiff, the lowest of eight bidders. The defendant had no intention of maintaining the integrity of the bidding system. The

defendant offered the contract to the plaintiff and Smith Peat at a price below the lowest bid knowing that if both refused, the defendant could force the plaintiff to perform the contract for \$198,500.

12 I find on these facts that there was an agreement between the plaintiff and the defendant, one of the terms of which was that the defendant would offer the roofing contract to the plaintiff if the plaintiff's bid was lowest and there was no reasonable cause to reject the plaintiff as a roofing subcontractor. There was no reasonable cause raised by the defendant during this trial. I find therefore that the defendant was in breach of its contract with the plaintiff. I find further that the plaintiff's damages were the lost profit and overhead from the roofing contract.

13 The plaintiff has set its damages at \$73,220. This amount includes profit and fixed overhead. The plaintiff attributed 40% profit and overhead on the actual roofing and 20% profit and overhead on the insulation, coping & flashing, walkway and other materials. The plaintiff then added a figure of \$28,325 to reflect work interruptions and unforeseen problems. The plaintiff's bid was the lowest of eight bids ranging from the plaintiff's bid at \$198,500 to the highest bid at \$349,860. If I assume that material and labour expense should be approximately the same for all bidders, the plaintiff's profit and overhead as the lowest of eight would seem quite reasonable.

14 There will be judgment in favour of the plaintiff and against the defendant in the amount of \$73,220 plus prejudgment interests. Costs are reserved for submission.

Action allowed.

TAB 2

2003 CarswellOnt 4045
Ontario Court of Appeal

A. Dynasty Roofing (Windsor) Ltd. v. Marathon Construction Services (1991) Inc.

2003 CarswellOnt 4045, [2003] O.J. No. 4117, 126 A.C.W.S. (3d) 247, 27 C.L.R. (3d) 5

**A. DYNASTY ROOFING (WINDSOR) LTD. (Plaintiff / Respondent) and
MARATHON CONSTRUCTION SERVICES (1991) INC. (Defendants / Appellant)**

Morden, Gillese, Armstrong JJ.A.

Heard: October 20, 2003
Oral reasons: October 20, 2003
Docket: CA C38036

Proceedings: affirming *A. Dynasty Roofing (Windsor) Ltd. v. Marathon Construction Services (1991) Inc.* (2002), 2002 CarswellOnt 1734, 16 C.L.R. (3d) 43 (Ont. S.C.J.)

Counsel: Arthur M. Barat for Defendant / Appellant
Claudio Martini, Joe Barile for Plaintiff / Respondent

Subject: Contracts

Related Abridgment Classifications

Construction law

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II.1 Building contracts

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APPEAL by general contractor from judgment reported at 2002 CarswellOnt 1734, 16 C.L.R. (3d) 43 (Ont. S.C.J.) where subcontractor's action against general contractor for damages for breach of contract was allowed.

Per Curiam:

1 We are satisfied that the trial judge's reasons do not reflect any palpable or overriding error in his conclusion that the bidding process resulted in a contract which obliged the defendant to award the roofing subcontract to the plaintiff, the lowest bidder. In particular, we refer to the evidence that the defendant considered the plaintiff to be bound to it by its bid to perform the subcontract at the price set forth in it.

2 Mr. Gignac, for the defendant, testified that in the industry the lowest bidder would normally be awarded the contract. In general, only pre-qualified bidders could participate in the bidding process and there was a closing date and time.

3 With respect to damages, while the amount appears to be high, there was evidence to support the trial judge's award. The plaintiff has not persuaded us that the trial judge made any error in law in his consideration of this evidence.

4 On the facts of this case there was no failure on the part of the plaintiff to mitigate its loss. The defendant was not in breach of contract until it had awarded the subcontract to Smith Peat.

5 The appeal is dismissed with costs.

6 [Costs submissions] The costs are fixed in the amount of \$6,900.

Appeal dismissed.

TAB 3

JUN 30 2026

HALIFAX, N.S.

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF:

The *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C- 36, as amended (the "CCAA")

AND IN THE MATTER OF:

An Application by CFFI Ventures Inc. (the "Applicant") for creditor protection under s. 11 of the CCAA, and other relief

ORDER

BEFORE THE HONOURABLE JUSTICE JOHN A. KEITH IN CHAMBERS:

UPON HEARING Stephen Kingston on behalf of the Applicant CFFI Ventures Inc. ("CFFI") and such other counsel as attended and wished to be heard;

AND UPON having read the Affidavits of Brittany Bartlett sworn herein on May 28 and June 5, 2026, the Affidavit of Michael Scott affirmed herein on June 2, 2026, the Affidavit of Richard Hugh sworn on June 3, 2026, and such other materials as were filed with the Court;

AND UPON CFFI having applied for an Order:

1. Further amending the Amended and Restated Initial Order herein to extend the Stay Period up to and including **September 18, 2026**; and
2. Approving the sale and investment solicitation process (the "**SISP**") as proposed by CFFI, in the form attached hereto as **Schedule "A"**;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. Paragraph 13 of the ARIO be and is hereby amended to extend the Stay Period up to and including **September 18, 2026**;
2. The SISP be and is hereby approved; and
3. The Monitor is hereby authorized and directed to commence and carry out the SISP and to take any and all steps and execute such documentation as it considers to be necessary or desirable to implement the terms of the SISP.

DATED at Halifax, Nova Scotia this 30 day of June, 2026.


PROTHONOTARY**MYRA JANES**

Deputy Prothonotary

Sale and Investment Solicitation Process

1. On March 13, 2026, pursuant to an order (the “**Initial Order**”) of the Supreme Court of Nova Scotia (the “**Court**”), CFFI Ventures Inc. (“**CFFI**”) commenced proceedings under *the Companies’ Creditors Arrangement Act* (the “**CCAA**”). Among other things, the Initial Order appointed FTI Consulting Canada Inc. as monitor (in such capacity, the “**Monitor**”).
2. On June 9, 2026, the Court granted an order (the “**SISP Order**”) approving the sale and investment solicitation process set out herein (the “**SISP**”) in accordance with the terms hereof. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Affidavit of Brittany Bartlett sworn February 14, 2026, as applicable.
3. This SISP sets out the manner in which (i) binding bids for executable transaction(s) involving the shares and/or the business and assets of CFFI will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought. Such transactions may include, among other things, a sale of some or all of CFFI’s shares, assets and/or business, and/or an investment in CFFI, each of which shall be subject to all terms set forth in this SISP (including, for greater certainty, the Reservation of Rights (as defined below)).
4. The SISP shall be conducted by the Monitor, with the assistance of FTI Capital Advisors – Canada ULC (the “**Sale Advisor**”), in consultation with CFFI, on the terms set out herein.
5. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by the Monitor.
6. The SISP will be conducted such that the Sale Advisor, under the oversight of the Monitor, will:
 - a) prepare marketing materials and a process letter in consultation with the Monitor and CFFI;
 - b) prepare a list of potential bidders that the Sale Advisor, in consultation with the Monitor and CFFI, believes may be interested in the opportunity;
 - c) prepare and provide applicable parties with access to a data room containing diligence information;
 - d) solicit interest from parties to enter into non-disclosure agreements with the Monitor and CFFI (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the Monitor and CFFI);
 - e) request that such parties submit (i) a notice of intent to bid that identifies the potential purchaser and a general description of the shares, assets and/or business(es) of CFFI that would be the subject of the bid and that reflects a reasonably likely prospect of culminating in a Qualified Bid (as defined below), as determined by the Monitor and the Sale Advisor, in consultation with CFFI (subject to the confidentiality requirements set forth in Sections 16 and 18 below) (a “**NOI**”) by the NOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 8 below, as determined by the Monitor and the Sale Advisor in consultation with CFFI (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below); and

- f) Coordinate due diligence meetings between CFFI's management and parties who have validly submitted an NOI (for the avoidance of doubt, no such meetings shall occur prior to the NOI Deadline).
7. The SISP shall be conducted subject to the terms hereof and the following key milestones:
- a) Deadline to submit NOI – 11:59 p.m. (Atlantic Time) on **July 21, 2026** (the “**NOI Deadline**”);
 - b) Deadline to submit a Qualified Bid – 11:59 p.m. (Atlantic Time) on **August 11, 2026** (the “**Qualified Bid Deadline**”);
 - c) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. (Atlantic Time) on **August 14, 2026**;
 - d) Auction (if applicable) – 10:00 a.m. (Atlantic Time) during the week of **August 17, 2026**; and
 - e) Implementation Order (as defined below) hearing - by no later than twelve (12) days after selection of the Successful Bid, subject to Court availability.
8. In order to constitute a Qualified Bid, a bid must comply with the following:
- a. it contemplates consideration which is sufficient to result in the repayment in full and in cash, on closing of such transaction, of all amounts outstanding under the Note Purchase Agreement or such lower amount as agreed to by the HPS Secured Creditors in their sole discretion, or consideration which, if combined with another bid or bid(s) for the remaining shares, business and/or assets of CFFI, would result in the repayment in full and in cash, on closing of such transaction, of such amount.
 - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable.
 - c. it is reasonably capable of being consummated within forty-five (45) days of the Auction or, if no Auction is held, within forty-five (45) days of being selected as the Successful Bid;
 - d. it contains:
 - i. duly executed binding transaction document(s);
 - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - iii. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
 - iv. disclosure of any connections or agreements with CFFI or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of CFFI or any of its affiliates; and
 - v. such other information reasonably requested by the Monitor and the Sale Advisor;
 - e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
 - f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding

equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the transaction agreement;

- g. it is not conditional upon:
 - i. the outcome of any due diligence by the bidder; or
 - ii. the bidder obtaining financing;
 - h. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
 - i. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals);
 - j. the bid is accompanied by a cash deposit (the “**Deposit**”) sent by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP (for greater certainty, a Deposit shall not be required where a secured creditor is credit bidding its secured debt against assets secured thereby);
 - k. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
 - l. it is received by the Qualified Bid Deadline.
9. The Monitor, in consultation with the Sale Advisor, may waive compliance with any one or more of the requirements specified in Section 8 above and deem a non-compliant bid to be a Qualified Bid.
10. Each of the milestone dates stated in Section 7 above may be extended by (i) the Monitor for up to no longer than fourteen days, in consultation with the Sale Advisor and CFFI, or (ii) further order of the Court. In such circumstances, the subsequent milestones contained in Section 7 shall be extended by the same amount of time.
11. If multiple overlapping Qualified Bids have been received by the Monitor on or before the Qualified Bid Deadline, the Monitor, in consultation with the Sale Advisor, may elect to proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with Schedule “A” hereto. The successful bid(s) selected within the Auction shall constitute the “**Successful Bid**”. Forthwith upon determining to proceed with an Auction, the Sale Advisor shall provide written notice to each party that submitted a Qualified Bid with copies of all Qualified Bids and a statement specifying which Qualified Bid is the leading bid.
12. If no NOI has been received by the Monitor on or before the NOI Deadline, then: (i) the SISP may be terminated by the Monitor and the Sale Advisor, in consultation with CFFI, the HPS Secured Creditors, and SFPC Quantum; and (ii) the HPS Secured Creditors may provide a credit bid or debt assumption transaction, which shall be deemed to be the Successful Bid, provided that:
- (i) the terms thereof are acceptable to the Monitor and the Sale Advisor; and
 - (ii) such bid or transaction does not provide for consideration in excess of the debt owed to the HPS Secured Creditors (the “**HPS Debt**”), excluding consideration in the form of assumed liabilities.

13. Subject to Section 10 above, if no Qualified Bid has been received by the Monitor on or before the Qualified Bid Deadline, then: (i) the SISP may be terminated by the Monitor and the Sale Advisor, in consultation with CFFI, the HPS Secured Creditors, and SFPC Quantum; and (ii) the HPS Secured Creditors may provide a credit bid or debt assumption transaction, which shall be deemed to be the Successful Bid, provided that:
- (i) the terms thereof are acceptable to the Monitor and the Sale Advisor; and
 - (ii) such bid or transaction does not provide for consideration in excess of the HPS Debt, excluding consideration in the form of assumed liabilities.
14. Following selection of the Successful Bid(s), the Monitor shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid(s) in accordance with the key milestones set out in Section 7. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Monitor, in consultation with CFFI, the Monitor shall apply to the Court for an order or orders approving such Successful Bid(s) and/or the mechanics to authorize CFFI to complete the transactions contemplated thereby, as applicable, and authorizing CFFI to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an “**Implementation Order**”).
15. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by the Monitor, in consultation with CFFI.
16. The Monitor, in consultation with CFFI, may, as it deems appropriate, consult with creditors of CFFI throughout the SISP, upon such assurances as to confidentiality as the Monitor may require.
17. Nothing in this SISP shall prohibit a secured creditor of CFFI from participating as a bidder in the SISP, including by way of a credit bid.
18. The Monitor and the Sale Advisor shall share any notice(s) of intent to bid(s) with the HPS Secured Creditors and SFPC Quantum on a confidential basis, including: (i) copies (or if not provided to the Monitor or the Sale Advisor in writing, a detailed description) of any such notice of intent to bid or any such bid received after the NOI Deadline and no later than three (3) business days following the NOI Deadline; and (ii) on or after the NOI Deadline, such other information as reasonably requested by the HPS Secured Creditors and SFPC Quantum or their respective advisors or as necessary to keep the HPS Secured Creditors and SFPC Quantum informed of such notice of intent to bid or bid no later than one (1) calendar day after any request or any material change or development with respect to a notice of intent to bid or bid. Notwithstanding the foregoing and subject to paragraph 19, the Monitor may delay making such disclosure and/or make such redactions in the information being disclosed where the Monitor considers it necessary to protect the fairness, integrity, or commercial effectiveness (including maximizing value) of the SISP.

19. The Monitor and the Sale Advisor shall share any notice(s) of intent to bid or bid(s) for shares of Cormorant Utility Services Limited held by CFFI with SFPC Quantum on a confidential basis, including: (i) copies (or if not provided to the Monitor or the Sale Advisor in writing, a detailed description) of any such notice of intent to bid or any such bid received, after the NOI Deadline and no later than three (3) business days following the NOI Deadline; and (ii) on or after the NOI Deadline, such other information as reasonably requested by SFPC Quantum or its advisors or as necessary to keep SFPC Quantum informed of such notice of intent to bid or bid, no later than one (1) calendar day after any request or any material change or development with respect to a notice of intent to bid or bid.
20. Nothing in the SISP or the SISP Order acknowledges or declares that the interests in the shares, assets and/or business(es) being marketed within this SISP are capable of being transferred by CFFI. For clarity, all parties' ability to challenge CFFI's ability to transfer any shares, assets and/or business(es) pursuant to a Successful Bid are expressly preserved and not derogated from (the "**Reservation of Rights**").

SCHEDULE "A": AUCTION PROCEDURES

1. **Auction.** If the Monitor receives two or more overlapping Qualified Bids, the Monitor, in consultation with the Sale Advisor, may elect to conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline (collectively, the "Qualified Parties"), shall be eligible to participate in the Auction. No later than 5:00 p.m. Atlantic Time on the day prior to the Auction, each Qualified Party must inform the Sale Advisor whether it intends to participate in the Auction. The Sale Advisor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only CFFI, the Qualified Parties, the Monitor, the Sale Advisor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with any other bidder with respect to the Auction and the bid process; and (ii) its bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bid (as defined below);
- c. **Minimum Overbid.** The Auction shall begin with the Qualified Bid(s) that represent the highest or otherwise best Qualified Bid (in the aggregate, if it is comprised of multiple Qualified Bids) as determined by the Monitor and the Sale Advisor, in consultation with CFFI (the "Initial Bid"), and any bid made at the Auction by a Qualified Party subsequent to the Sale Advisor's announcement of the Initial Bid (each, an "Overbid"), must proceed in minimum additional cash increments of USD\$1,000,000;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Sale Advisor, in its discretion, may establish separate video conference rooms to permit interim discussions between the Sale Advisor, the Monitor, and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;

- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.

Selection of Successful Bid

4. **Selection.** Before the conclusion of the Auction, the Monitor and the Sale Advisor, in consultation with CFFI, will: (a) review each Qualified Bid, considering the factors set out in Section 8 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's (Parties') ability to close a transaction within forty-five (45) of the Auction (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid(s), (v) the net benefit to CFFI and (vi) any other factors the Monitor and the Sale Advisor may reasonably deem relevant; and (b) identify the highest or otherwise best bid(s) received at the Auction (the "**Successful Bid(s)**") and the Qualified Party(ies) making such bid, the "**Successful Party(ies)**").

5. **Acknowledgement.** The Successful Party(ies) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) were made within one business day of the Successful Bid(s) being selected as such, unless extended by the Monitor in its sole discretion, subject to the milestones set forth in Section 7 of the SISP.

TAB 4

Court File No. CV-23-00694886-00CL

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

THE HONOURABLE MR.	)	MONDAY, THE 21 st
	)	
JUSTICE OSBORNE	)	DAY OF FEBRUARY, 2023

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

ORDER
(Approval of Sale Process, Stalking Horse SPA and KERP)

THIS APPLICATION made by the Applicant for, *inter alia*, an Order approving a sale process (the “**Sale Process**”) with respect to the Property (as defined in the Order Appointing Receiver made by this Court, this day, in this Court file (the “**Appointment Order**”)) of the Respondent was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference.

ON READING the Application Record, including the affidavit of Benjamin Trefler sworn February 15, 2023 (the “**Trefler Affidavit**”) and the Exhibits thereto, and the pre-filing report of KSV Restructuring Inc. as the proposed receiver and manager of

the Respondent (in such capacity, the “**Receiver**”) dated February 17, 2023 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Applicant, the Receiver, and such other counsel as were present and listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Joël Turgeon sworn February 21, 2023:

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Process.

SERVICE

2. **THIS COURT ORDERS** that the time and manner for service of the Application Record and the Pre-Filing Report are hereby abridged and validated so that this application is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process terms attached hereto as Schedule ‘A’ (the “**Sale Process Terms**”) are hereby approved.
4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process in accordance with the Sale Process Terms and to take such further steps as it considers appropriate or necessary in carrying out the Sale Process.

5. **THIS COURT ORDERS** that the Receiver, the Respondent, and their respective affiliates, partners, directors, officers, employees, advisors, lawyers and agents (each, a “**Representative**”) shall have no personal or corporate liability with respect to any and all losses, claims, damages or liabilities, of any nature and kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Receiver, the Respondent, or the applicable Representative, as determined by this Court.
6. **THIS COURT ORDERS** that for purposes of the Receiver’s evaluation of bids in the Sale Process, the Receiver shall consider the cash consideration provided in all bids as though it was expressed in the same currency, in accordance with the exchange rate applicable as of the Bid Deadline (as that term is defined in the Sale Process Terms).

APPROVAL OF THE STALKING HORSE AGREEMENT

7. **THIS COURT ORDERS** that the Share Purchase Agreement between the Receiver and Reflourish Capital Limited (the “**Reflourish Stalking Horse Agreement**”) of which a copy is attached as Exhibit “P” to the Trefler Affidavit, is hereby approved, including the break fee and expense reimbursement provisions set out therein, and the Receiver is hereby authorized and directed to execute the Reflourish Stalking Horse Agreement for purposes of constituting the “stalking horse” bid in respect of the Germany Shares in the Sale Process. For the avoidance of doubt, nothing contained in this Order approves the sale or the

vesting of the assets as contemplated in the Reflourish Stalking Horse Agreement and it is understood that this Court's approval of the Successful Bid(s) will be considered on a subsequent motion made to this Court in accordance with the Sale Process.

KERP APPROVAL

8. **THIS COURT ORDERS** that the KERP (as defined in the Trefler Affidavit) is hereby approved and that the Receiver is hereby authorized and directed to cause the Respondent to make payments and act in accordance with the KERP.
9. **THIS COURT ORDERS** that the key employee referred to in the KERP (the "**Key Employee**") shall be entitled to the benefit of and is hereby granted a charge on all of the assets, undertakings and properties of the Respondent, including all proceeds thereof (the "**KERP Charge**") to secure the amounts payable to the Key Employee under the KERP. The KERP Charge shall have the priority set out in paragraph 9 below.
10. **THIS COURT ORDERS** that the priorities of the KERP Charge, the Receiver's Charge and the Receiver's Borrowings Charge, as among them, shall be as follows:

First – the Receiver’s Charge (as defined in the Appointment Order);

Second – the Receiver’s Borrowings Charge (as defined in the Appointment Order); and

Third – the KERP Charge.

SEALING

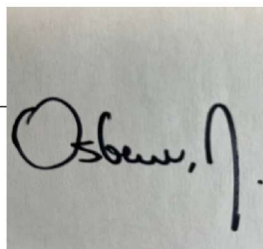
11. **THIS COURT ORDERS** that the terms of the KERP, a copy of which is attached as Confidential Exhibit “1” to the Trefler Affidavit, be and hereby are sealed until 30 days after the completion of the Sale Process, or further Court Order.

GENERAL

12. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States, in the United Kingdom, or in the European Union to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give

effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osborn, J." with a stylized flourish at the end.

2023.02.2

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SCHEDULE 'A'

SALE PROCESS TERMS.

Sale Process

Overview

1. On February 21, 2023, pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), KSV Restructuring Inc. was appointed as receiver and receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties, excluding the Excluded Assets and Excluded Business (as defined in the Receivership Order) (the “**Property**”) of 11157353 Canada Corp. (the “**Company**”) which is principally comprised of 100% of the issued and outstanding share capital in Materia Deutschland GmbH (the “**Germany Shares**”), 100% of the issued and outstanding share capital in Materia Ventures Malta Ltd. (the “**Malta Shares**”), and 100% of the issued and outstanding share capital in Kara Wellness Limited and Handpicked CBD Limited (the “**UK Shares**”, together with the Germany Shares and Malta Shares, the “**Assets**”).
2. Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property of the Company, which marketing may involve advertising or soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver may deem appropriate (the “**Sale Process**”).
3. On February 21, 2023, the Court issued an Order (the “**Sale Process Order**”) that, among other things:
 - (a) approved the Sale Process as described herein; and
 - (b) approved and accepted the Share Purchase Agreement between the Receiver and Reflourish Capital Limited (“**Reflourish**” and the “**Stalking Horse Bid**”) for the purpose of conducting a “stalking horse” solicitation process in respect of the Germany Shares, in accordance with the Sales Process.

Purpose

4. The purpose of this Sale Process is to seek offers for the purchase of: (i) the Germany Shares for an amount and on terms which are superior to the transaction contemplated by the Stalking Horse Bid; (ii) the Malta Shares; and (iii) the UK Shares.
5. The Sale Process, and any orders of the Court made in the proceeding relating to the Sale Process, shall exclusively govern the process for soliciting and selecting bids for the sale of the Assets (each, a “**Transaction**”).

Timeline

6. The following table sets out the key milestones and deadlines under the Sale Process:

Milestone	Deadline
Sale Process Commencement	As soon as practicable following the granting of the Sale Process Order
Publication of Notice of the Sale Process and delivery of the Teaser Letter and NDA to Potential Bidders, and upon execution of the NDA, provide Potential Bidders with access to the CIM and Data Room	As soon as practicable following the granting of the Sale Process Order
Bid Deadline	30 days after the granting of the Sale Process Order (the “ Bid Deadline ”)
Selection of the Successful Bid(s), including, if necessary, holding the Auction	As soon as reasonably practical following the Bid Deadline
Approval Hearing with the Court	As soon as reasonably practical following the Selection of the Successful Bid (s)
Closing of the Transaction under the Successful Bid(s)	No later than 5 days following the Court granting the Approval and Vesting Order (the “ Closing Date ”)

7. The deadlines set out in paragraph 6 above may be extended by the Receiver, acting reasonably, for up to a maximum of one week in the aggregate without the approval of the Court or the Stalking Horse Bidder. Any such extensions will be communicated to all bidders in writing.

8. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Toronto, Ontario).

Pre-Marketing Stage

9. As soon as reasonably practicable (the “**Sale Process Commencement**”), the Receiver will:

- (a) prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the Sale Process and inviting recipients of the Teaser

Letter to express their interest pursuant to the terms of the Sale Process; (ii) a non-disclosure and confidentiality agreement with the Receiver (an “**NDA**”); and (iii) a confidential information memorandum (“**CIM**”). The Teaser Letter will specifically stipulate that the Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Teaser Letter, the Data Room (as defined below), or made available pursuant to the Sale Process or otherwise, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver;

- (b) gather and review all due diligence materials, it determines to be relevant, to be provided to interested parties and establish a secure, electronic data room (the “**Data Room**”), which will be maintained and administered by the Receiver throughout the Sale Process; and
- (c) prepare a list of potential interested parties (each a “**Potential Bidder**”), including: (i) parties that have approached the Company or the Receiver indicating an interest in the opportunity; and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Assets.

Marketing Stage

10. As soon as reasonably possible after the Sale Process Commencement, the Receiver shall:
 - (a) arrange for a notice of the Sale Process (and such other relevant information as the Receiver considers appropriate) (the “**Notice**”) to be published in such newspaper(s), publication(s) or journal(s) as the Receiver considers appropriate; and
 - (b) send the Teaser Letter and NDA to all Potential Bidders and to any other party who responds to the Notice as soon as reasonably practicable.

Free of Any and all Claims and Interests

11. Depending on the structure of the Transaction proposed by a Qualified Bidder (as defined herein), the Assets of the Company shall be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order issued by the Court approving the Transaction (the “**Approval and Vesting Order**”). For greater certainty, all security interests, liens, claims and encumbrances will be discharged from the Assets and will attach to the net proceeds from a Transaction(s) following the granting of the Approval and Vesting Order.

“As Is, Where Is”

12. Any purchase of the Assets will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver or Company or any of their respective directors, officers, partners, employees, agents, advisors, representatives or estates,

except to the extent as may be set forth in a Binding APA (as defined herein) and approved by the Court.

13. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Company and the Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and information in respect of the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties or guarantees, express, implied, statutory or otherwise, regarding the Company or its Assets or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Participation Requirements

14. Each Potential Bidder must deliver to the Receiver, an executed NDA, in the form provided by the Receiver, prior to the distribution of any confidential information by the Receiver.

15. If it is determined by the Receiver that a Potential Bidder: (i) has a *bona fide* interest in pursuing a Transaction (based on financial ability to consummate a transaction, industry experience, and other factors); and (ii) has delivered an executed NDA, then such Potential Bidder will be deemed to be a “**Qualified Bidder**”.

16. Reflourish shall be deemed to be a Qualified Bidder in respect to the Germany Shares for the purposes of this Sale Process.

17. The Receiver will grant each Qualified Bidder access to the Data Room and CIM, as soon as reasonably practicable, which will provide, among other things, information considered relevant to the Sale Process, including in the case of a Qualified Bidder that desires to make a bid for the Germany Shares, the Stalking Horse Bid.

18. No Potential Bidder or Qualified Bidder, nor the Stalking Horse Bidder shall be permitted to receive the details of any bids or Binding APAs submitted or the details or existence of any confidential discussions or correspondence among the Company, the Receiver and any bidder in connection with the Sale Process, except to the extent the Receiver, at its sole discretion, determines is reasonable or in preparation for the Auction (as defined below).

Due Diligence

19. The Receiver, subject to competitive and other business considerations, may give each Qualified Bidder such access to due diligence materials and information relating to the Company as the Receiver deems appropriate. Due diligence access may include access to the Data Room, on-site inspections and other matters which a Qualified Bidder may reasonably request and to which the Receiver may agree. Neither the Receiver, nor any of its representatives will be obligated to furnish any information relating to the Company to any person. The Receiver and Company make no representation or warranty, express or implied, as to the information provided through this due diligence process or otherwise, except as may be set forth in a Binding APA.

Binding APAs

20. A Qualified Bidder that desires to make a bid for the Germany Shares shall deliver written copies of its bid, in the form of the Stalking Horse Bid, together with a blackline outlining all changes made to the Stalking Horse Bid (the “**Binding APA for the Germany Shares**”).
21. A Qualified Bidder that desires to make a bid for the Malta Shares shall deliver written copies of its bid in the form of a share purchase agreement (the “**Binding APA for the Malta Shares**”).
22. A Qualified Bidder that desires to make a bid for the UK Shares shall deliver written copies of its bid in the form of a share purchase agreement (together with the Binding APA for the Germany Shares and the Binding APA for the Malta Shares, a “**Binding APA**”).
23. The Receiver will consider (i) a bid for all of the Company’s Assets (an “**En Bloc Bid**”) or (ii) separate bids to acquire some but not all of the Company’s Assets (“**Piecemeal Bids**”). Subject to Court approval, the Receiver has the right to accept an En Bloc Bid if the total consideration is greater than separate Piecemeal Bids.
24. A Binding APA (for any of the Assets) must be submitted to the Receiver as follows: Attn: Noah Goldstein [ngoldstein@ksvadvisory.com] and Eli Brenner [ebrenner@ksvadvisory.com], so as to be received by no later than the Bid Deadline.
25. A Binding APA must comply with all of the following:
 - (a) it is received by the Receiver prior to the Bid Deadline;
 - (b) the bid (either individually or in combination with another bid that makes up one Binding APA) is an offer:
 - (i) to purchase the Germany Shares on terms consistent with the form of the Stalking Horse Bid, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
 - (ii) to purchase the Malta Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver; and
 - (iii) to purchase the UK Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
 - (c) it is duly authorized and executed, and includes a purchase price for the Assets (collectively, the “**Purchase Price**”):
 - (i) with respect to the Germany Shares, €400,000 (or the equivalent in Canadian Dollars) in cash due on closing of the Transaction plus (i) a minimum incremental amount of \$6,000 Canadian Dollars in excess of the

aggregate purchase price contemplated by the Stalking Horse Bid; (ii) a reimbursement of Reflourish's reasonable fees and disbursements relating to the preparation and execution of the Stalking Horse Bid in the maximum amount of \$25,000 Canadian Dollars; and (iii) a break fee in the amount of \$20,000 Canadian Dollars (inclusive of HST, if any);

- (ii) with respect to the Malta Shares, an amount in cash due on closing of the Transaction; and
 - (iii) with respect to the UK Shares, an amount in cash due on closing of the Transaction.
- (d) includes a letter of acknowledgment stating that the Qualified Bidder's offer is irrevocable and open for acceptance until the closing of the Successful Bid (as defined herein);
- (e) it is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, in its sole discretion, of the ability of the Qualified Bidder to consummate the proposed Transaction, and that will allow the Receiver to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed sale and pay the Purchase Price;
- (f) it will be unconditional (other than customary or other conditions acceptable to the Receiver in its sole discretion) and not subject to further due diligence;
- (g) it fully discloses the identity of each person or entity (including all beneficial owners of such entity) that will be bidding for, or otherwise sponsoring, financing, participating or benefiting from such bid;
- (h) it includes an acknowledgement and representation of the Qualified Bidder that:
- (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets, the Company or the completeness or accuracy of any information provided by the Receiver or any other party in connection therewith;
- (i) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Binding APA submitted by the Qualified Bidder;
- (j) provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**"); and

(k) the bid contemplates closing the Transaction by or on the Closing Date.

26. The Receiver may determine, at its sole discretion, whether to entertain bids for the Germany Shares, the Malta Shares, and/or the UK Shares that do not conform to one or more of the requirements for a Binding APA specified herein.

27. Notwithstanding anything herein, the offer represented by the Stalking Horse Bid with respect to the Germany Shares shall be deemed to be a Binding APA for the Germany Shares.

Evaluation of Binding APA

28. Each Binding APA will be considered and reviewed by the Receiver based upon several factors including, without limitation, the Purchase Price and the net value provided by such bid, the financial ability of the Qualified Bidder to close the Transaction, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the Transaction, the value of the transaction, the Assets included or excluded from the bid, the transition services required from the Receiver (if any), any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

29. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Binding APA. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Binding APA.

Selection of Successful Germany Share Bid

30. With respect to the Germany Shares the Receiver may identify the highest or otherwise best offer for the Germany Shares (the “**Successful Germany Share Bid**”).

31. If no Binding APA for the Germany Shares (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Bid shall be deemed the Successful Germany Share Bid.

32. If the Receiver receives one or more Binding APAs for the Germany Shares, it may, in the Receiver’s sole discretion, proceed with an auction to select the Successful Germany Share Bid (an “**Auction**”) on notice to each Qualified Bidder that submits a Binding APA for the Germany Shares and is invited to attend the Auction by the Receiver having regard to the terms of its Binding APA for the Germany Shares (each, an “**Auction Bidder**”). For greater certainty, Reflourish shall constitute an Auction Bidder in all circumstances in which an Auction is conducted for the Germany Shares.

33. If an Auction is commenced, the Receiver will implement Auction procedures that will be made available to all Auction Bidders if and when the Auction is implemented.

34. The Receiver shall consult with ELA Capital Inc, as applicant in these proceedings (“**Ela Capital**”), prior to the determination of a Successful Germany Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

Selection of Successful UK Share Bid and Malta Share Bid

35. With respect to the UK Shares and the Malta Shares: (i) the Receiver may identify the highest or otherwise best offer or combination of offers for the UK Shares (the “**Successful UK Share Bid**”); (ii) the Receiver may identify the highest or otherwise best offer or combination of offers for the Malta Shares (the “**Successful Malta Share Bid**”); or (iii) if the Receiver determines that two or more Binding APAs for the UK Shares and the Malta Shares are close in value, at the discretion of the Receiver, the Receiver may decide to negotiate with the applicable Qualified Bidders in order for the Qualified Bidders to submit an improved bids for the UK Shares or the Malta Shares, and as a result of such negotiations and the Receiver may identify a Successful UK Share Bid and Successful Malta Share Bid.

36. The Receiver shall consult with Ela Capital prior to the determination of a Successful UK Share Bid and the Successful Malta Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

37. The Receiver shall have no obligation to select a Successful UK Share Bid or a Successful Malta Share Bid and it reserves the right to reject any or all Binding APAs.

Backup Bid(s)

38. After selecting the Successful Bid(s), the Receiver may, at its sole discretion, chose the second highest or otherwise best offer or combination of offers for the Assets to act as the backup bid (the “**Backup Bid**”) in circumstances where the Transaction(s) contemplated by the Successful Bid(s) does not close.

Treatment of Deposits

39. In the event a Binding APA is not selected as a Successful Malta Share Bid, a Successful Germany Share Bid, or a Successful UK Share Bid (each a “**Successful Bid**”), the Deposit (without interest) shall be returned to the Qualified Bidder as soon as reasonably practicable after the closing of the Successful Bid.

40. A Binding APA may not be withdrawn, modified or amended without the written consent of the Receiver prior to the closing of the Successful Bid. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the closing of the Successful Bid shall result in the forfeiture of such Qualified Bidder’s Deposit as liquidated damages and not as a penalty.

41. If a Qualified Bidder who made a Successful Bid breaches its obligations under the terms of the Sale Process or Binding APA, its deposit shall be forfeited as liquidated damages and not as a penalty.

Sale Approval Hearing

42. The sale of the Assets to any Successful Bidder is expressly conditional on the approval of the Successful Bid by the Court pursuant to an Approval and Vesting Order.

43. The motion for an order of the Court approving any Successful Bid (the “**Sale Approval Hearing**”) shall be brought by the Receiver. The Sale Approval Hearing shall be heard on a date determined by the Receiver and subject to the Court’s availability.

44. All of the Binding APAs for the Germany Shares other than any Successful Germany Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Germany Share Bid.

45. All of the Binding APAs for the Malta Shares other than any Successful Malta Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Malta Share Bid.

46. All of the Binding APAs for the UK Shares other than any Successful UK Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful UK Share Bid.

Reservation of Rights

47. The Receiver may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; and (b) notwithstanding anything contained herein, at any time before the issuance and entry of an Approval and Vesting Order, reject any bid that it determines is (i) inadequate or insufficient; or (ii) not in conformity with the requirements of this Sale Process or any order of the Court.

48. This Sale Process does not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed.

49. The Receiver shall have the right to adopt such rules, not inconsistent with the Sale Process described herein, that, in its reasonable discretion, will promote the goals of the Sale Process.

50. The Receiver may make any modification to the Sale Process that it considers appropriate in the circumstances and, if determined necessary or desirable in the Receiver’s sole discretion, it will seek Court approval of such modification on notice to the service list in the receivership proceeding. For greater certainty, any extension of time by the Receiver pursuant to paragraph 6 herein will not be considered “material”.

Approvals

51. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the Receivership Order or any other statute or as otherwise required at law in order to implement a Successful Bid.

Limitation of Liability

52. The Receiver and the Company shall not have any liability whatsoever to any person or party, including without limitation to any Potential Bidder, Qualified Bidder, a bidder who

submits a Successful Bid or any creditor or other stakeholder, for any act or omission related to this Sale Process, save gross negligence or willful misconduct. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason, matter or thing whatsoever, save gross negligence or willful misconduct.

53. Other than as specifically set forth in a definitive agreement between the Receiver and a Successful Bidder, the Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship among the Company, the Receiver, a Potential Bidder, a Qualified Bidder, a Successful Bidder, or any other party.

54. The Receiver and the Company shall not be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the completion of any Transaction completed under the Sale Process. Any such claim shall be the sole liability of the bidder who completes a Transaction under the Sale Process.

55. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with their participation in the Sale Process, including submission of any bids, due diligence activities, completion of a Successful Bid, preparation for and attendance at the Sale Approval Hearing and any negotiations or actions whether or not they lead to the consummation of a Transaction.

Supervision of the Sale Process

56. The Receiver will have responsibility for managing all communication with all Potential Bidders. This shall include facilitating the delivery of all communications, providing the Teaser Letter, coordinating the execution of NDAs, and managing the process of answering enquiries. Under no circumstances should a representative of the Company be contacted directly or indirectly in respect of the Sale Process, including diligence requests, without the prior written consent of the Receiver. Any such unauthorized contact or communication could result in exclusion from the Sale Process, in the Receiver's sole discretion.

57. The Company and its principals, employees and professional advisors shall cooperate fully with the Receiver and provide documents and information requested as part of the Sale Process to the Receiver in a prompt fashion.

Jurisdiction

58. All bidders (including Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) and waived any right to a jury trial in connection with any disputes relating to the Sale Process, including the qualification of bids, the construction and enforcement of the Sale Process, the selection of any Successful Bids and closing of any Transactions, as applicable.

ELA CAPITAL INC.

and

11157353 CANADA CORP.

Applicant

Respondent

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

Proceedings commenced at Toronto

**ORDER
(Approval of Sale Process, Stalking Horse SPA
and KERP)**

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Lawyers for the Applicant



SUPERIOR COURT OF JUSTICE
Commercial List

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00694886-00CL DATE: February 21st, 2023

REGISTRAR: JC

NO. ON LIST: 4

TITLE OF PROCEEDING: ELA CAPITAL INC. v. 11157353 CANADA INC.

BEFORE JUSTICE: OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Joel Turgeon	Lawyer or the Applicant	Jturgeon@reconllp.com
Jessica Wuthmann	Lawyer for the Applicant	jwuthmann@reconllp.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Sara-Ann Wilson	Lawyer for the Respondent Re Flourish Capital Limited	Sara.wilson@dentons.com
Neelum Raja	Lawyer for the Respondent	Nraja@dsavocats.ca
Kenneth Kraft	Lawyer for the Respondent Re Flourish Capital Limited	Kenneth.Kraft@dentons.ca
Lindsay Amantea	Lawyer for Kanabo PLC	lamantea@dsavocats.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Asim Iqbal	Lawyer for Proposed Receiver	AIQBAL@millerthomson.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant seeks the appointment of a receiver over the property of the Respondent (other than Excluded Assets and Excluded Business), approval of a sales process including a stalking horse bid, approval of a KERP and a sealing order on limited terms in respect of the financial terms of the KERP.
2. Defined terms have the meaning given to them in the Application Record and/or the Motion Record of the Proposed Receiver unless otherwise defined in this Endorsement.
3. The Applicant is both the largest secured creditor and largest shareholder of the Respondent. The Respondent is the parent holding company of the Materia Business. It has no operations. It owns the Shares and employs the Manager of the Materia business. The Respondent also holds all of the Shares of Materia Malta (a fully licensed medical cannabinoid based-product import, manufacturing and export facility), Materia Germany (a certified MCBP import, labelling and distribution business) and Materia UK (assets but no operations).
4. The relief sought today by the Applicant is recommended by the Proposed Receiver and is not opposed by any party.
5. The Applicant is indebted to the Respondent in the amount of \$3,251,214 as at January 25, 2023 pursuant to the terms of Loan Agreements entered into between the parties. Pursuant to those Loan Agreements, the obligations of the Respondent are secured by the Security in respect of which the collateral includes the Shares. The Security has been properly registered under the PPSA.
6. The Respondent is in default under the Loan Agreements and has failed to repay principal or interest as at the Maturity Date. The Respondent is insolvent. It has consented to enforcement in accordance with section 244 of the BIA.
7. There are two other secured creditors of the Respondent, Kanabo PLC and the Germany Shares Stalking Horse Bidder ("SHB"), both of which are on notice of this Application and the relief sought today.
8. First, I am satisfied in the circumstances that it is just and convenient to appoint KSV as receiver (the "Receiver") pursuant to section 243 of the BIA and section 101 of the CJA. The Applicant is a secured creditor, the debtor is insolvent, the 10 day notice requirement under section 244 has been complied with and in all the circumstances, the appointment of the Receiver is just and convenient having regard to all the circumstances. The Receiver has consented to act in that capacity.
9. I am also satisfied that the receivership should be over the Shares but not the Excluded Assets or Excluded Business, which is not atypical in receiverships over cannabis businesses. The related Receiver's Charge and Receiver's Borrowings Charge are also unopposed and are appropriate. They are generally consistent with those approved by this Court.
10. Here, the Borrowings Charge facilitates borrowing by the Receiver up to a maximum of \$575,000, all of which is the result of significant negotiations among the relevant parties. This financing allows the businesses in Malta and Germany to continue as going concerns to preserve and maximize the value of the Shares, all of which is accretive to maximizing the outcome for stakeholders.
11. Second, I am also satisfied that the proposed sales process should be approved. It is backstopped as against the minimum outcome represented by the Stalking Horse Bid. All of this is consistent with similar processes approved by this Court and I am satisfied that in this particular case, it will maximize the

potential value for the benefit of all stakeholders, and the transparency of a court-approved sales process will further enhance the fairness and maximize the transparency of the process leading to what is hoped will be a favourable outcome (See *Danier Leather Inc. (Re)*, 2016 ONSC 1044 and *Cannapiece Group Inc. v. Carmela Marzilli*, 2022 ONSC 6379 as well as *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ONCA)). The terms of the proposed stalking horse bid are reasonable.

12. I observe that the proposed 30 day time period is tight, but reasonable in the circumstances given the previous efforts to market the Shares and the exposure to the marketplace, all as measured against the urgency necessitated by the insolvency itself. That earlier process has been, effectively, ongoing since April 2021 which further informs the reasonableness of the 30 day process.
13. Third, the KERP is appropriate in the circumstances and as measured as against the non-exhaustive list of factors this Court has previously adopted as being relevant to a consideration as to whether a KERP should be approved (See *Grant Forest Products Inc.* 2009 CanLII 42046 (ONSC) and *Danier Leather, supra*).
14. Here, the Manager is a key employee of the Respondent and in the absence of a KERP will resign. The evidence is to the effect that his continued employment is critical to the potential success of the sales process and the maximize Asian a value for the stakeholders. Again, the senior secured creditor and the Receiver both support the relief sought and it is not opposed by any other party.
15. Fourth, I am equally satisfied that the terms of the KERP should be sealed, albeit for a limited period of time. I am satisfied that the *Sherman Estate* and *Sierra Club* tests are met here. The information sought to be kept confidential albeit on a temporary basis relates to the personal compensation of the Manager. The sealing order would be in effect only until 30 days following the conclusion of the sales process or further order of the Court with the further result that the order is proportionate and impairs the open court principle minimally and to a limited extent.
16. In sum, the relief sought is appropriate and the proposed course of action represents the only realistic or potentially available route to avoid an otherwise inevitable bankruptcy which is not in the interests of any stakeholders.
17. Order to go in the form signed by me which is effective immediately and without the necessity of issuing and entering.

A handwritten signature in black ink, appearing to read "Owen, J.", is positioned at the bottom right of the page. The signature is written in a cursive, flowing style.

TAB 5

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of
the document digitally filed on Dec
6, 2024 COURT FILE NO.:

2401-13217

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

GREENFIRE RESOURCES OPERATING
CORPORATION

DEFENDANT

VICEROY CANADIAN RESOURCES CORP.

APPLICANT

ALVAREZ & MARSAL CANADA INC., in its capacity as receiver and
sales agent of Viceroy Canadian Resources Corp.'s right, title and
interest in and to the Amended and Restated Farm in Participation
Agreement effective as of January 31, 2019 and amended and restated
June 19, 2020

DOCUMENT

**ORDER APPROVING SALE PROCESS, STALKING HORSE TERM
SHEET AND OTHER RELIEF**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd St SW
Calgary, AB T2P 5C5

Attention: Jeffrey Oliver / Danielle Marechal

Email: joliver@cassels.com / dmarechal@cassels.com

Phone: 403 351 2921 / 403 351 2922

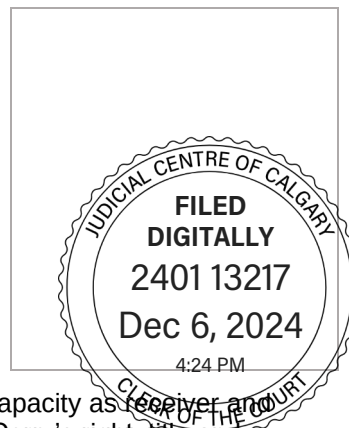
File No.: 57100-5

DATE ON WHICH ORDER WAS PRONOUNCED: DECEMBER 6, 2024

NAME OF JUSTICE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE HARRIS

LOCATION OF HEARING: EDMONTON, AB

UPON THE APPLICATION of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as court-appointed receiver and sales agent (in such capacity, the "**Receiver**") of Viceroy Canadian Resources Corp.'s (the "**Debtor**") right, title and interest in and to the Amended and Restated Farm in Participation Agreement effective as of January 31, 2019 and amended and restated June 19, 2020, for an order approving, among other things: (i) a sale process in the form attached hereto as **Schedule "A"** (the "**Sale Process**"); and (ii) a binding stalking horse term sheet between the Receiver and 2666355 Alberta Ltd. (the "**Stalking Horse Bidder**"), dated November 28, 2024 (the "**Stalking Horse Term Sheet**") and attached as Schedule "A" to the Sale Process;



AND UPON HAVING read the Receivership Order granted by the Honourable Justice B. Johnston on October 22, 2024 (the “**Receivership Order**”); the First Report of the Receiver, dated November 28, 2024 (the “**First Report**”); and the Affidavit of Service of Angeline Gagnon, sworn December 3, 2024;

AND UPON HEARING from counsel to the Receiver, counsel to Viceroy, and the Stalking Horse Bidder and any other interested party in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms not otherwise defined in this order (the “**Order**”) shall have the meaning ascribed to them in the Sale Process or the First Report, as applicable.

Service

2. Service of notice of this application (the “**Application**”) and materials in support of this Order are hereby declared to be good and sufficient and time for service of the Application and supporting materials is hereby abridged to that actually given.

Approval of the Sale Process and Stalking Horse Term Sheet

3. The Sale Process and the Stalking Horse Term Sheet are commercially reasonable and are hereby ratified and approved. The Receiver is empowered and authorized to:
 - (a) implement the Sale Process and do all things reasonably necessary to conduct and give full effect to the Sale Process, and carry out the obligations thereunder including but not limited to, taking any additional steps or executing additional documents as may be necessary or desirable in order to carry out and complete the Sale Process; and
 - (b) execute the Stalking Horse Term Sheet.
4. The Break Fee is hereby approved and the Receiver is authorized and directed to pay the Break Fee as required and in the manner prescribed by the Stalking Horse Term Sheet.
5. The Receiver is authorized to apply to this Honourable Court to amend, vary or seek advice, assistance or direction with respect to the Sale Process and the Stalking Horse Term Sheet, as may be necessary in order to give full effect to the terms of this Order or as otherwise determined in the Receiver’s discretion.

Activities of Receiver

6. The Receiver's conduct and activities as set out in the First Report are hereby ratified and approved.

General

14. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

15. Service of this Order shall be deemed good and sufficient by:

(a) serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Stalking Horse Bidder and its solicitors; and

(b) posting a copy of this Order on the Receiver's website at:
<https://www.alvarezandmarsal.com/Viceroy>

and service on any other person is hereby dispensed with.

16. Service of this Order may be effected by facsimile, electronic mail, personal delivery, recorded mail or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

SCHEDULE "A"
SALE PROCESS

STALKING HORSE SALE PROCESS PROCEDURE

Introduction

1. Pursuant to an order (the "**Receivership Order**") of the Honourable Justice B. Johnston of the Court of King's Bench of Alberta dated October 22, 2024 in Court Action Number 2401-13217 (the "**Receivership Proceedings**") Alvarez & Marsal Canada Inc. was appointed as receiver and sales agent (the "**Receiver**") of Viceroy Canadian Resources Corp.'s (the "**Debtor**") right, title and interest in and to the Amended and Restated Farm-In Participation Agreement, effective as of January 31, 2019 and amended and restated as of June 19, 2020 (the "**Farm-In Agreement**"), including without limitation the Debtor's 5% working interest in the McKay SAGD Project and the Plant, and any proceeds thereof (collectively, the "**Property**"), pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c.J-2 and 65(7) of the *Personal Property Security Act*, RSA 2000, c.P-7.
2. At a court application scheduled for December 6, 2024, the Receiver intends to request the Court's approval of, among other things: (i) a sale process (the "**Sale Process**") as set forth herein; and (ii) the Stalking Horse Term Sheet, pursuant to which the Stalking Horse Bidder has agreed to purchase a portion of the Property (*i.e.*, the Purchased Assets) in the event that the Stalking Horse Bidder is deemed to be the successful bidder in relation to the Purchased Assets.
3. Below are the procedures (the "**Sale Process Procedure**") to be followed in the Sale Process to seek a Successful Bid or Successful Bids (as defined herein), and, if there is a Successful Bid or Successful Bids, to complete the transaction(s) contemplated thereunder.
4. All monetary references shall be in Canadian dollars, unless otherwise stated.

Defined Terms

5. Capitalized Terms not otherwise defined herein shall have the meaning ascribed to them in the Stalking Horse Term Sheet or the Receivership Order. In this Sale Process Procedure:
 - "**Alternate Transaction**" means any transaction for the sale of some or all of the Property to any party other than the Stalking Horse Bidder;
 - "**Acquired Property**" has the meaning ascribed to it in Section 17;
 - "**Approval Application**" has the meaning ascribed to it in Section 37;
 - "**Assumed Liabilities**" has the meaning ascribed to it in the Stalking Horse Term Sheet;
 - "**Auction Bidder**" has the meaning ascribed to it in Section 35(b);
 - "**Break Fee**" means the sum of \$75,000, which shall be paid to the Stalking Horse Bidder in the circumstances described herein;
 - "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Calgary;
 - "**Comparison Model**" has the meaning ascribed to it in Section 35(c);
 - "**Court**" means the Alberta Court of King's Bench;
 - "**Debtor**" has the meaning ascribed to it in the Section 1;

"Farm-In Agreement" has the meaning ascribed to it in Section 1 and is attached as Exhibit "C" to the Affidavit of Robert Logan sworn September 6, 2024 and filed in the Receivership Proceedings;

"Leading Bid" has the meaning ascribed to it in Section 35(l);

"McKay SAGD Project" has the meaning ascribed to it in the Receivership Order;

"Minimum Incremental Overbid" means cash (or a non-cash equivalent value) of at least \$25,000

"Notice Schedule" has the meaning ascribed to it in Section 21;

"Opportunity" has the meaning ascribed to it in Section 6;

"Plant" has the meaning ascribed to it in Schedule "B" of the Receivership Order;

"Potential Bidder" has the meaning ascribed to it in Section 21;

"Priority Payables" has the meaning ascribed to it in the Stalking Horse Term Sheet;

"Property" has the meaning ascribed to it in the Section 1;

"Purchase Price" has the meaning ascribed to it in the Stalking Horse Term Sheet;

"Purchased Assets" has the meaning ascribed to it in the Stalking Horse Term Sheet;

"Qualified Bid" has the meaning ascribed to it in Section 26;

"Qualified Bidder" has the meaning ascribed to it in Section 22;

"Receiver's Certificates" has the meaning ascribed to it in the Receivership Order;

"Residual Property" means all of the Property excluding the Purchased Assets;

"Residual Property Successful Bid" has the meaning ascribed to it in Section 34;

"Residual Property Successful Bidder" has the meaning ascribed to it in Section 34;

"Sale Process Order" means an order of the Court (if granted) approving the Sale Process and the Sale Process Procedure;

"Selected Superior Offer" has the meaning ascribed to it in Section 36;

"Stalking Horse Bidder" means a 2666355 Alberta Ltd., a wholly owned subsidiary of Greenfire Resources Operating Corporation;

"Stalking Horse Property Successful Bid" has the meaning ascribed to it in Section 36;

"Stalking Horse Property Successful Bidder" has the meaning ascribed to it in Section 36;

"Stalking Horse Term Sheet" means the Binding Term Sheet between the Stalking Horse Bidder and the Receiver, in its capacity as receiver and sale agent over the Property and not in its personal or corporate capacity, dated November 28, 2022 and attached hereto as **Schedule "A"**;

"Stalking Horse Transaction" means the transaction contemplated by the Stalking Horse Term Sheet;

"Starting Bid" has the meaning ascribed to it in Section 35(a);

"Subsequent Bid" has the meaning ascribed to it in Section 35(l);

"Successful Bid" means a Residual Property Successful Bid or a Stalking Horse Property Successful Bid;

"Successful Bidder" means a Residual Property Successful Bidder or a Stalking Horse Property Successful Bidder;

"Superior Bid" means a credible, reasonably certain and financially viable Qualified Bid, or combination of Qualified Bids, the terms of which offer are, in the determination of the Receiver, in its sole discretion acting reasonably, no less favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Term Sheet, and which at a minimum includes a payment in cash of the Purchase Price under the Stalking Horse Term Sheet plus the Break Fee plus one Minimum Incremental Overbid as at the closing of such transaction;

"Vesting Order" has the meaning ascribed to it in Section 37;

"Viceroy Debt" has the meaning ascribed to it in the Stalking Horse Term Sheet; and

"Winning Bid" has the meaning ascribed to it in Section 36.

Purchase Opportunity and Stalking Horse Term Sheet

6. The Sale Process is intended to solicit interest in, and opportunities for a sale of, all or part of the Property (the **"Opportunity"**), which primarily consists of Viceroy's 5% working interest in and to the Title Documents, Joint Lands, Joint Wells and Facilities (each as defined in the Farm-in Agreement), including without limitation the Plant. In order to maximize the number of participants that may have an interest in the Opportunity, the Sale Process will provide for the solicitation of interest for the sale of Viceroy's interests in the Property. In particular, interested parties may submit proposals to acquire all, substantially all or a portion of Viceroy's Property.
7. The Receiver has entered into the Stalking Horse Term Sheet with the Stalking Horse Bidder, pursuant to which, if there is no Superior Bid from a party other than the Stalking Horse Bidder in relation to the Purchased Assets, the Receiver shall apply to the Court for a sale approval and vesting order in relation Stalking Horse Term Sheet, pursuant to which all of the Debtor's right, title and interest in and to the Purchased Assets and all privileges thereto will vest absolutely and irrevocably in and to the Stalking Horse Bidder.
8. The Stalking Horse Term Sheet shall constitute a Qualified Bid for all purposes and at all times under this Sale Process Procedure.
9. As part of the Sale Process Order, the Receiver will be seeking the approval of certain bid protections in respect of the Stalking Horse Term Sheet, such as the Break Fee. No other bidder may request or receive a break fee or expense reimbursement as part of any offer made pursuant to this Sale Process.
10. Because the Stalking Horse Term Sheet does not contemplate the purchase of all of the Property, the possible outcomes of the Sale Process include: (i) a successful bid by the Stalking Horse Bidder for the Purchased Assets or a successful bid by a Party other than the Stalking Horse Bidder for the Purchased Asset (either on their own or in combination with some or all of the Residual Property) (*i.e.*, a Stalking Horse Property Successful Bid); and (ii) a successful bid by a Party other than the Stalking Horse Bidder for the purchase of some or all of the Residual Property (*i.e.*, a Residual Property Successful Bid).

11. In the event that there is a Residual Property Successful Bid (in addition to a Stalking Horse Property Successful Bid), the Receiver shall also apply to the Court for a sale approval and vesting order in relation to the Residual Property Successful Bid.

Sale Process Procedure

12. The Sale Process Procedure set forth herein describes, among other things, the property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property and the Debtor, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder(s) and the Court's approval and recognition thereof. The Receiver shall administer the Sale Process Procedure. In the event that there is disagreement as to the interpretation or application of this Sale Process Procedure, the Court will have jurisdiction to hear and resolve such dispute.
13. The Receiver will use reasonable efforts to complete the Sale Process Procedure in accordance with the timelines as set out in **Schedule "B"** hereto. The Receiver shall be permitted to make such adjustments to the timeline that it determines are reasonably necessary.
14. A non-confidential teaser letter prepared by the Receiver (the "**Teaser**"), describing the opportunity to submit an Alternate Transaction and the Sale Process Procedure will be made available by the Receiver to prospective purchasers and will be posted on the Receiver's website as soon as practicable following the issuance of the Sale Process Order.
15. The Receiver shall prepare a Confidential Information Memorandum ("**CIM**") describing the opportunity to submit an Alternate Transaction to prospective purchasers that have executed a non-disclosure agreement with the Receiver, in a form satisfactory to the Receiver, and as more particularly set-forth below.
16. The Receiver will also populate an electronic data room (the "**VDR**") with detailed listings, photographs, technical specifications and other information required for prospective purchasers to perform due diligence on the Property and the Debtor.

"As Is, Where Is"

17. The sale of any property or assets under the Stalking Horse Term Sheet and/or an Alternate Transaction (the "**Acquired Property**") will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its agents, except to the extent set forth in the relevant final sale agreement with a Successful Bidder(s).
18. The representations, warranties, covenants or indemnities of an Alternate Transaction for the Purchased Assets shall not be materially more favourable than those set out in the Stalking Horse Term Sheet except to the extent additional tangible monetary value of an equivalent amount is provided by a Successful Bidder other than the Stalking Horse Bidder for such representations, warranties, covenants or indemnities.

Free of Any and All Claims and Interests

19. In the event of a sale pursuant to this Sale Process, all of the rights, title and interests of the Debtor in and to the Acquired Property will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against, other than any permitted encumbrances agreed to by the Receiver and the Successful Bidder(s) (collectively the "**Claims and Encumbrances**"), such Claims and Encumbrances to attach to the net proceeds of

the sale of such Acquired Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), pursuant to an approval and vesting order made by the Court, upon the application of the Receiver. The vesting out of Claims and Encumbrances in an Alternate Transaction for the Purchased Assets by a Successful Bidder other than the Stalking Horse Bidder shall not be materially more favourable to the Successful Bidder than those set out in the Stalking Horse Term Sheet, except to the extent additional tangible monetary value of an equivalent amount is provided for the vesting out of such Claims and Encumbrances.

Publication of Notice and Teaser

20. As soon as reasonably practicable after the granting of the Sale Process Order by the Court, the Receiver shall cause a notice of the Sale Process Procedure and any other relevant information, to be published in the *BOE Report*, the *Daily Oil Bulletin*, the *Insolvency Insider*, the *Calgary Herald*, and such other publications as the Receiver may consider appropriate. At the same time, the Receiver will invite bids from interested parties, by which ever means the Receiver deem appropriate.

Participation Requirements

21. In order to participate in the Sale Process, each person interested in submitting an Alternate Transaction (a "**Potential Bidder**") must deliver to the Receiver at the address specified in **Schedule "C"** hereto (the "**Notice Schedule**") (including by email transmission):
- (a) an executed non-disclosure agreement in form and substance satisfactory to the Receiver, which shall inure to the benefit of any Successful Bidder that closes a transaction contemplated by the Successful Bid and shall be executed and delivered to the Receiver prior to the distribution of any confidential information by the Receiver to a Potential Bidder (including the CIM and access to the VDR);
 - (b) a letter setting forth the Potential Bidder's (i) identity, (ii) contact information and (iii) full disclosure of its direct and indirect principals; and
 - (c) a form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the acquisition of all, substantially all or a portion of the Property.
22. If the Receiver determines that a Potential Bidder has: (i) delivered the documents contemplated in paragraph 21 above; and (ii) a reasonable prospect of completing an Alternate Transaction, the Potential Bidder will be deemed a "**Qualified Bidder**" and will be promptly notified of such classification by the Receiver. For the avoidance of doubt, the Stalking Horse Bidder is a Qualified Bidder.

Due Diligence

23. The Receiver shall provide any person deemed to be a Qualified Bidder with a copy of the CIM and access to the VDR and the Receiver shall provide to Qualified Bidders further access to such reasonably required due diligence materials and information relating to the Property and the Debtor as the Receiver deems appropriate, including virtual presentations and access to further information in the VDR.
24. The Receiver and its respective advisors, make no representation or warranty as to the information contained in the CIM, the VDR, or other information to be provided through the due diligence process or otherwise, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder and approved by the Court.

Seeking Qualified Bids from Qualified Bidders

25. A Qualified Bidder that desires to submit an Alternate Transaction must deliver either:
- (a) a written final, binding proposal (the "**Final Bid**") in the form of a fully executed asset purchase agreement substantially in the form to be prepared by the Receiver in accordance with this Sale Process Procedure (the "**Template APA**"); or
 - (b) a signed letter confirming that the Qualified Bidder wishes to assume and perform the obligations of the Stalking Horse Bidder under the Stalking Horse Term Sheet, subject to (i) the satisfaction in cash consideration of the entire Purchase Price as contemplated by paragraph 30 the necessary adjustment to the Purchase Price to include the Minimum Incremental Overbid and the Break Fee, and detailing any adjustments, revisions or other terms that the Qualified Bidder proposes be included in the Stalking Horse Term Sheet (a "**Confirmation of Term Sheet Assumption**"),

in each case to Receiver at the address specified in the Notice Schedule (including by email transmission), so as to be received by it not later than 4:00 p.m. Calgary time on January 24, 2025 (the "**Final Bid Deadline**").

Qualified Bids

26. A Final Bid will be considered a Qualified Bid only if (i) it is submitted by a Qualified Bidder and (ii) the Final Bid complies with, among other things, the following (a "**Qualified Bid**"):
- (a) it contains
 - (i) a duly executed purchase and sale agreement based on the Template APA and a blackline of the executed purchase and sale agreement to the Template APA; or
 - (ii) a Confirmation of Term Sheet Assumption compliant with the requirements in paragraph 25(b) above;
 - (b) it includes a letter stating that the Final Bid is irrevocable until the time that the Successful Bid or Successful Bids are approved by the Court;
 - (c) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
 - (d) it provides a written confirmation that the Qualified Bidder has not engaged in any collusion with any other bidder;
 - (e) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
 - (f) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver), or such other form of payment acceptable to the Receiver, payable to the order of the Receiver, in an amount equal to 10% of the total consideration in the Qualified Bid to be held and dealt with in accordance with these Sale Process Procedure;
 - (g) to the extent the Final Bid contemplates the purchase of the Purchased Assets, the aggregate consideration, as calculated and determined by the Receiver in its sole discretion, to be paid in cash by the Qualified Bidder under the Qualified Bid exceeds the aggregate of the Purchase Price under the Stalking Horse Term Sheet, plus the Break Fee

and plus the Minimum Incremental Overbid, upon completion of the transaction contemplated by the Stalking Horse Term Sheet;

- (h) it is not conditional upon:
 - (i) the outcome of unperformed due diligence by the Qualified Bidder, and/or
 - (ii) obtaining financing;
 - (i) it contains evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body); and
 - (j) it is received by the Final Bid Deadline.
27. The Receiver, acting reasonably, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant bid to be a Qualified Bid.
28. The Receiver may, following the receipt of any bid, seek clarification with respect to any of the terms or conditions of such bid and/or request and negotiate one or more amendments to such bid prior to determining if the bid should be considered a Qualified Bid.
29. The Receiver will identify the highest or otherwise best bid or bids and the Receiver shall notify each Qualified Bidder in writing as to whether its bid constitutes a Qualified Bid within five (5) Business Days of the Final Bid Deadline, or at such later time as the Receiver deems appropriate.

Stalking Horse Term Sheet

30. The total aggregate Purchase Price for the Purchased Assets in the Stalking Horse Term Sheet shall be the total of:
- (a) the Viceroy Debt as at the Closing Date (as defined in the Stalking Horse Term Sheet), which amount, as at November 15, 2024 totals \$389,723.43 and is estimated to increase by approximately \$10,000.00 per month;
 - (b) all amounts owing by the Receiver to the Stalking Horse Bidder (as assignee in interest) under any Receiver's Certificates, which amount is estimated to be \$100,000.00 plus accrued interest;
 - (c) the assumption by the Stalking Horse Bidder of the Assumed Liabilities, which Assumed Liabilities are estimated to be \$2,000,000; and
 - (d) all Priority Payables, which amount is estimated to be between \$200,000 and \$300,000.
31. If the Stalking Horse Bidder is the Stalking Horse Property Successful Bidder, the Stalking Horse Term Sheet also contemplates that the Receiver and Greenfire Resources Operating Corporation, will negotiate a separate agreement or agreements for the Plant whereby the Plant will cease to be a Production Facility pursuant to section 14.02(c) of the 2007 CAPL Operating Procedure and its operation governed by an agreement using the 1999 PJVA CO&O Agreement as its basis. As a result, the Plant will no longer be subject to the Farm-In Agreement. If the Stalking Horse Bidder is not the Stalking Horse Property Successful Bidder, the Receiver understands that Greenfire Resources Operating Corporation will engage in discussions with the Successful Bidder about entering into an agreement using the 1999 PJVA CO&O Agreement as its basis.

No Superior Bids

32. If none of the Qualified Bids, or combination thereof, received, constitute a Superior Bid, the Receiver shall deem the Stalking Horse Bidder to be the Stalking Horse Property Successful Bidder in the Sale Process in relation to the Purchased Assets and shall proceed to seek a sale approval and vesting order and close the Stalking Horse Transaction.

If a Superior Bid is Received

33. If the Receiver determines that one or more, or a combination thereof, of the Qualified Bids constitutes a Superior Bid, the Receiver shall provide the parties making Superior Offers and the Stalking Horse Bidder the opportunity to make further bids through the auction process set out below (the "**Auction**").

Bids for Residual Property

34. In the event that a Qualified Bid, or a combination thereof, relate to the Residual Property, the Receiver will identify the highest or otherwise best bid or bids (a "**Residual Property Successful Bid**"), and the Receiver shall notify the bidder(s) ("**Residual Property Successful Bidder**") making such Residual Property Successful Bid within ten Business Days of the Final Bid Deadline. For greater certainty, the Auction shall not apply to a Residual Property Successful Bidder or a Residual Property Successful Bid.

Auction

35. If an Auction is to be held, the Receiver will conduct the Auction commencing at 10:00 a.m. (Calgary time) on February 7, 2025 at the offices of the Receiver's legal counsel, Cassels Brock & Blackwell LLP, Suite 3810, Bankers Hall West, 888 3rd Street SW Calgary, AB T2P 5C5, Calgary Alberta, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, which Auction may be adjourned by the Receiver at any time. The Auction shall run in accordance with the following procedures:
- (a) prior to 4:00 p.m. Calgary time on February 5, 2025, the Receiver will provide unredacted copies of the applicable Qualified Bid(s) which the Receiver believes is/are (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to the Stalking Horse Bidder and to all Qualified Bidders that have made a Superior Bid;
 - (b) prior to 4:00 p.m. Calgary time on February 6, 2025, each Qualified Bidder that has made a Superior Bid and the Stalking Horse Bidder, must inform the Receiver whether it intends to participate in the Auction (the parties who so inform the Receiver that they intend to participate are hereinafter referred to as the "**Auction Bidders**");
 - (c) prior to the Auction, the Receiver shall develop a financial comparison model (the "**Comparison Model**") which will be used to compare the Starting Bid and all Subsequent Bids (as defined herein) submitted during the Auction, if applicable;
 - (d) during the morning of February 7, 2025, the Receiver shall make themselves available to meet with each of the Auction Bidders to review the procedures for the Auction, the mechanics of the Comparison Model, and the manner by which Subsequent Bids shall be evaluated during the Auction, and the Auction shall be held immediately thereafter;
 - (e) only representatives of the Auction Bidders, the Receiver, and such other persons as permitted by the Receiver (and the advisors to each of the foregoing entities) are entitled to attend the Auction in person (and the Receiver shall have the discretion to allow such persons to attend by teleconference);

- (f) the Receiver shall arrange to have a court reporter attend at the Auction;
- (g) at the commencement of the Auction, each Auction Bidder shall be required to confirm that it has not engaged in any collusion with any other Auction Bidder with respect to the bidding or any sale;
- (h) only the Auction Bidders will be entitled to make a Subsequent Bid (as defined herein) at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Qualified Bidder's Qualified Bid, shall nevertheless remain fully enforceable against such Qualified Bidder if it is selected as the Winning Bid (as defined herein);
- (i) all Subsequent Bids presented during the Auction shall be made and received in one room on an open basis. All Auction Bidders will be entitled to be present for all Subsequent Bids at the Auction with the understanding that the true identity of each Auction Bidder at the Auction will be fully disclosed to all other Auction Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Auction Bidders throughout the entire Auction;
- (j) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- (k) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make a Subsequent Bid, requirements to bid in each round, and the ability of multiple Auction Bidders to combine to present a single bid) for conducting the Auction, provided that such rules are (i) not inconsistent with this Sale Process Procedure, general practice in insolvency proceedings, the Receivership Order, or the Sale Process Order, and (ii) disclosed to each Auction Bidder at the Auction;
- (l) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver, utilizing the Comparison Model, determines is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined herein), in each case by at least the Minimum Incremental Overbid. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the bid (including the value and material terms thereof) that it believes to be the highest or otherwise best offer (the "**Leading Bid**"). A round of bidding will conclude after each Auction Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;
- (m) to the extent not previously provided (which shall be determined by the Receiver), an Auction Bidder submitting a Subsequent Bid must submit, at the Receiver's discretion, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid;
- (n) the Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction of not more than 24 hours each, to among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require that that Auction Bidder (including, as may

be applicable, the Stalking Horse Bidder) has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the [proposed transaction] at the prevailing overbid amount;

- (o) the Stalking Horse Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, provided, however, that such Subsequent Bids are made in accordance with these Sale Process Procedures;
 - (p) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed;
 - (q) the Auction shall be closed within five (5) Business Days of the start of the Auction unless extended by the Receiver; and
 - (r) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.
36. At the end of the Auction, the Receiver shall select the winning bid (the "**Winning Bid**"). Once a definitive agreement has been negotiated and settled in respect of the Winning Bid as selected by the Receiver (the "**Selected Superior Offer**") in accordance with the provisions hereof, the Selected Superior Offer shall be the "**Stalking Horse Property Successful Bid**" hereunder and the person(s) who made the Selected Superior Offer shall be the "**Stalking Horse Property Successful Bidder**" hereunder. If the Stalking Horse Property Successful Bidder is a bidder other than the Stalking Horse Bidder, the Stalking Horse Bidder shall be entitled to receive, and the Receiver shall pay to it, the Break Fee, immediately after closing, from the Stalking Horse Property Successful Bidder's payment of cash at closing.

Approval Application

37. The Receiver shall apply to the Court (the "**Approval Application**") for an order approving the Successful Bid(s) and authorizing the Receiver to enter into any and all necessary agreements with respect to the Successful Bid(s), as well as an order vesting title to the Acquired Property subject to the Successful Bid(s) in the same of the Successful Bidder(s) (the "**Vesting Order**").
38. The Approval Application will be held on a date to agreed upon by the Receiver and the Successful Bidder(s). The Approval Application may be adjourned or rescheduled by the Receiver.
39. All Qualified Bids and Subsequent Bids (other than the Successful Bid(s)) shall be deemed rejected on and as of the date and of approval of the Successful Bid(s) by the Court, but not before, and shall remain open for acceptance until that time.

Deposits

40. All Deposits shall be retained by the Receiver in a non-interest-bearing bank account specified by the Receiver. If there is a Successful Bid(s), the Deposit paid by the Successful Bidder(s) whose bid is approved at the Approval Application shall be applied to the purchase price to be paid by the Successful Bidder(s) upon closing of the approved transaction and will be non-refundable. The Deposits of Qualified Bidders not selected as the Successful Bidder(s) shall be returned to such bidders within five (5) Business Days of the date on which the Vesting Order is granted by the Court. If there is no Successful Bid, all Deposits shall be returned to the bidders within five (5) Business Days of the date upon which the Sale Process is terminated in accordance with these procedures.

Approvals

41. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by applicable law in order to implement a Successful Bid(s).

Further Orders

42. At any time during the Sale Process the Receiver may apply to the Court for advice and directions with respect to any aspect of these Sale Process Procedure or the discharge of its powers and duties hereunder.

Amendments

43. These Sale Process Procedure shall be interpreted so as to comply and be consistent with any applicable laws, regulations or public health directives related to the COVID-19 pandemic, and may be amended at any time with the approval of the Receiver to the extent necessary or advisable to comply with same.
44. The Receiver shall have the right to modify the Sale Process Procedure and the deadlines set out herein if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sale Process Procedure. There shall be no amendments to the Sale Process Procedure without the consent of the Receiver or further order of the Court.

SCHEDULE "A"
STALKING HORSE TERM SHEET
(ATTACHED)

BINDING TERM SHEET**ASSET SALE TRANSACTION**

This binding term sheet (the “**Term Sheet**”) sets forth the agreement of the parties hereto (the “**Parties**”) with respect to the proposed transaction which is described herein (the “**Proposed Transaction**”). The Parties acknowledge that this Term Sheet is being provided as part of a Sale Process to be administered by the Receiver.

Upon execution of this Term Sheet by the Parties, this Term Sheet shall create a binding legal obligation on the part of the Parties, subject only to the terms and conditions hereof, the Sale Process Order and approval of the Court of King’s Bench of Alberta (the “**Court**”). The terms and conditions set forth in this Term Sheet are intended to be comprehensive and are not subject to any further due diligence by any Party or to any further definitive documentation, except as expressly permitted or contemplated hereunder.

Purchaser:	The Purchaser will be 2666355 Alberta Ltd. (the “Purchaser”), a wholly owned subsidiary of Greenfire Resources Operating Corporation (“Greenfire”). Viceroy Canadian Resources Corp. (“Viceroy”) is indebted to Greenfire (the “Viceroy Debt”), in the amount of \$389,723.43, as at November 15, 2024, pursuant to its obligations under the Amended and Restated Farm-In and Participation Agreement among Viceroy and Everest Canadian Resources Corp., effective January 31, 2019 and amended and restated as of June 19, 2020 (as amended and restated from time to time, the “Farm-In Agreement”), including without limitation Viceroy’s 5% working interest in the McKay SAGD Project and the Plant, and any proceeds thereof (as such terms are defined in the Receivership Order). Immediately prior to Closing, Greenfire shall assign to Purchaser beneficial ownership of the Viceroy Debt and the amounts owing under the Receiver’s Certificates (as defined below) in exchange for shares in the Purchaser resulting in Greenfire holding 100% of all issued and outstanding shares in Purchaser.
Seller:	Alvarez & Marsal Canada Inc, in its capacity as the Receiver (the “Seller” or, the “Receiver”), without security, of Viceroy’s right, title and interest in and to the Property (as defined in the Receivership Order), and not in its personal or corporate capacity, pursuant to the Receivership Order (the “Receivership Order”) granted by the Court on October 22, 2024 in Action No. 2401-13217.
Closing Date:	Closing of the Proposed Transaction shall occur thirty (30) business days following the waiver or satisfaction of the closing conditions as set out in the Definitive Documents, or such earlier or later date as agreed by the Parties in writing (the “Closing Date”).

Court Approval of Term Sheet and Sale Process:	On December 6, 2024, the Receiver shall apply to the Court for, among other things, an order (the “Sale Process Order”), approving a stalking horse sale process procedure (the “Sale Process”), in substantially the form attached as Schedule “A” to the Sale Process Order. The Purchaser and the Receiver confirm and acknowledge that the Proposed Transaction is intended to be a stalking horse bid in accordance with the terms of the Sale Process Order and the Sale Process. The Purchaser hereby agrees to allow for disclosure of this Term Sheet to the Court and all other parties by the Receiver as part of the Sale Process to be commenced by the Receiver as soon as practicable following Court approval of the Sale Process.
Sale Process:	The Receiver acknowledges that it shall conduct the Sale Process in accordance with the Sale Process Order.
Purchased Assets and Assumed Liabilities:	Viceroy’s entire right, title and interest (being a 5% ownership interest) in and to the Plant (as that term is defined in Schedule “B” to the Receivership Order) (the “Purchased Assets”). Purchaser shall assume and agree to pay, perform and discharge when due Viceroy’s share of abandonment and reclamation obligations in respect of the Property (the “Assumed Liabilities”).
Excluded Assets:	All assets of Viceroy other than the Purchased Assets (the “ Excluded Assets ”). The Excluded Assets include Viceroy’s right, title, estate and interest in the Other Assets as defined below.
Encumbrances:	As used herein, “Encumbrances” shall include any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third part of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing (including any conditional sale or title retention agreement, or any capital or financial lease) (the “ Encumbrances ”).
Consideration:	The total aggregate purchase price paid by the Purchaser for the Proposed Transaction shall be the total of the following (the “Purchase Price”): i. The Viceroy Debt as at the Closing Date; ii. Amounts owing by the Receiver to the Purchaser (as assignee in interest) under any Receiver’s Certificates (“Receiver’s Certificates”) issued by the Receiver under the Receivership Order; iii. The assumption by the Purchaser of the Assumed Liabilities; and

	iv. All amounts that rank in priority to the Operator's Lien, including without limitation: a. any Court ordered or statutory priority claims; and b. all of the taxable fees, costs and expenses associated with the Receiver's administration of the Property (as defined in the Receivership Order), including all amounts secured by the Receiver's Charge and Receiver's Borrowing Charge (each as defined in the Receivership Order), (collectively, the "Priority Payables"). "Operator's Lien" means the lien registered by Greenfire Resources Operating Corporation on May 23, 2024 over, inter alia, the Debtor's 5% working interest in the McKay SAGD Project and the Plant, and any proceeds thereof pursuant to the <i>Personal Property Security Act</i>, RSA 2000, c P-7. The Purchase Price shall be satisfied as follows: i. The total amount of the Viceroy Debt, to be adjusted at closing to account for accrued interest, costs and other accrued allowable charges in accordance with the terms of the Farm-In Agreement, to be paid as a credit bid by way of set-off against the Viceroy Debt; ii. The total amount owing under all Receiver's Certificates, inclusive of accrued interest, to be paid as a credit bid by way of set-off against such Receiver's Certificates; iii. The assumption by Purchaser of the Assumed Liabilities; and iv. The total amount of the Priority Payables to be paid by way of cash payment on Closing. On the Closing Date, the Purchaser shall pay the Purchase Price or cause the Purchase Price to be paid by tendering: i. A fully executed release and waiver of the aggregate amount of the Viceroy Debt, and ii. A fully executed release and waiver of the aggregate amount owing under all Receiver's Certificates. iii. The execution and delivery by Purchaser of an assumption agreement pursuant to which Purchaser shall fund, pay, assume and be liable for, and indemnify Greenfire from against, the Assumed Liabilities; and iv. A cash payment to the Receiver in the amount of the Priority Payables.
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Proposed Transaction:	The Proposed Transaction shall be by way of an asset purchase transaction whereby the Purchaser shall purchase the Purchased Assets, with the exception of the Excluded Assets, free and clear of all liabilities (other than the Assumed Liabilities) and Encumbrances (the “ Asset Purchase Agreement ”) in accordance with the Sale Process Order and a Sale Approval and Vesting Order, to be obtained.
Proposed Definitive Documents:	The Proposed Transaction contemplated hereby is conditional on the Purchaser being determined to be the Successful Bidder, the Court granting a Sale Approval and Vesting Order in form and substance satisfactory to the Receiver and Purchaser, and the Purchaser and the Receiver having entered into an Asset Purchase Agreement and documents incidental thereto setting out the full terms and conditions of the agreements contemplated by this Term Sheet (collectively, the “ Definitive Documents ”) in form and substance satisfactory to the Purchaser and the Seller and consistent with the terms of this Term Sheet.
Representations and Warranties:	The acquisition of the Purchased Assets shall be on an “as is, where is basis”.
Break Fee:	In the event that a Successful Bid, other than the Proposed Transaction, is approved by the Court and the transaction contemplated thereby is completed, a fee (the “ Break Fee ”) in the amount of CAD\$75,000 will be payable by the Receiver to the Purchaser upon consummation of the Successful Bid.
Restrictions on Seller:	From the date of this Term Sheet until the Closing Date, except with the prior written consent of the Purchaser or by further order of the Court and except with respect to the CO&O Agreement and Definitive Documents, the Receiver shall not enter into any agreement or other commitment whatsoever in respect of the Purchased Assets (other than a non-disclosure agreement as set out in the Sale Process) and shall not solicit or entertain expressions of interest, letters of intent or offers, other than pursuant to the bid procedures set out in the Sale Process.
CO&O Agreement	Ownership and operation of the Plant and certain petroleum and natural gas rights, wells and other assets (collectively the “ Other Assets ”) are currently governed by the Farm-In Agreement which incorporates the 2007 CAPL Operating Procedure (the “ Operating Procedure ”). If the Purchaser is the Successful Bidder, upon Closing, the Other Assets will be owned by Greenfire and Viceroy (or another purchaser) and the Purchased Assets will be owned by Greenfire and Purchaser resulting, by operation of certain provisions of the Operating Procedure, in a bifurcation of the Farm-In Agreement. To address such bifurcation and other matters related to the Purchased Assets and as contemplated in section 14.02(c) of the

	Operating Procedure, if the Purchaser is the Successful Bidder, the Seller and Greenfire shall negotiate a separate agreement for the Plant and its operation using the 1999 PJVA CO&O Agreement as its basis (the “ CO&O Agreement ”) and Purchaser shall be required to execute and deliver the CO&O Agreement at Closing. The CO&O Agreement shall be in form and substance satisfactory to each of the Seller, Greenfire and the Purchaser.
Termination by Mutual Consent:	This Term Sheet shall terminate: (i) upon the closing of an alternate transaction for the Purchased Assets if the Purchaser is not the Successful Bidder; or (ii) by mutual written consent of the Purchaser and the Receiver.
Purchaser Termination Conditions:	The Purchaser shall not be obligated to purchase the Purchased Assets from the Receiver on the Closing Date if any of the following conditions apply on the Closing Date (the “Purchaser Termination Conditions”): i. Any of the material representations and warranties of the Receiver in the Definitive Documents are inaccurate, except for any inaccuracy that, individually and taken together with other such inaccuracies, has not had and would not reasonably be expected to have a material adverse effect on the ability of the Purchaser to consummate the Proposed Transaction and to have the full benefit of the Purchased Assets or to operate any business in respect of the Purchased Assets as such business is currently operated in all materials respects. ii. The Receiver has breached any covenant of the Receiver in the Definitive Documents. iii. The Receiver has pursued an alternative transaction in contravention of the Sale Process. iv. There has been a material adverse change to the Purchased Assets
Receiver Termination Conditions:	The Receiver shall not be obligated to sell the Purchased Assets to the Purchaser on the Closing Date if any of the following conditions (the “Receiver Termination Conditions”) apply on the Closing Date: i. The Purchaser is not the Successful Bidder;

	ii. A Sale Approval and Vesting Order (in form and substance satisfactory to the Receiver) approving the Proposed Transaction has not been granted or has been appealed, stayed, varied or vacated; iii. The Receivership Order has been appealed, stayed, varied or vacated or any law or order has been enacted issued, made or entered which would reasonably be expected to make the Proposed Transaction illegal or to otherwise directly or indirectly cease trade, enjoin, restrain or otherwise prohibit completion of the Proposed Transaction; iv. Any of the material representations and warranties of the Purchaser in the Definitive Documents are inaccurate, except for any inaccuracy that, individually and taken together with other such inaccuracies, has not had and would not reasonably be expected to have a material adverse effect on the ability of the Receiver to consummate the sale of the Purchased Assets. v. The Purchaser has breached any covenant of the Purchaser in the Definitive Documents. vi. The Purchaser shall have executed and delivered the CO&O Agreement.
Certain Documentation Matters:	The Definitive Documents shall contain representations, warranties, covenants and events of default customary for transactions of this type.
Receiver Liability:	The Purchaser acknowledges and agrees that in all matters pertaining to this Term Sheet and Definitive Documents, the Receiver is acting solely in its capacity as Receiver of the Property and, as such, its liability, if any, will be in its capacity as Receiver, and it and its representatives shall have no personal or corporate liability of any kind, whether in contract, in tort or otherwise.
Governing Law:	This Term Sheet and the Definitive Documents shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each Party hereto irrevocably agrees to submit to the exclusive jurisdiction of the Courts of Alberta with respect to any matters arising herein or relating hereunder.
Binding Term Sheet:	All of the Parties hereby agree and acknowledge that this Term Sheet represents a binding agreement of the Parties with respect to

	the subject matter provided herein, subject to the negotiation and execution of the Definitive Documents.
Interpretation:	Capitalized terms not otherwise defined herein have the meaning given to them in the Sale Process.
Counterparts:	This Term Sheet may be executed and delivered electronically in two or more counterparts, any one of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have duly executed this Term Sheet as of this 28th day of November, 2024.

2666355 ALBERTA LTD.

Signed by:
Per: Tony Kraljic
Name: Tony Kraljic
Title: Director

ALVAREZ & MARSAL CANADA INC., in its capacity as Receiver of Viceroy Canadian Resources Corp.'s right, title and interest in and to the Amended and Restated Farm in Participation Agreement effective as of January 31, 2019 and amended and restated June 19, 2020, and not in its personal or corporate capacity

Per: _____
Name:
Title:

SCHEDULE "B"
TIMELINE

Event	Deadline
Publication of Opportunity and Sale Process Procedure and posting on Receiver's Website	As soon as practical following the granting of the Sale Process Order
Receiver to Distribute Teaser to Potential Bidders	As soon as practical following the granting of the Sale Process Order
Receiver to prepare CIM and VDR for Potential Bidders	As soon as practical following the granting of the Sale Process Order
FINAL BID DEADLINE	January 24, 2025
Approval Application of Stalking Horse Term Sheet if no Superior Bids received	As soon as practical following the Final Bid Deadline
Notice sent to Qualified Bidders if they submitted a Qualified Bid and of Auction	January 31, 2025
Qualified Bidders and Stalking Horse Bidder to Notify Receiver of Intention to Participate in Auction	February 3, 2025
AUCTION	February 7, 2025
Approval Application of Winning Bid	As soon as practical following the Auction

SCHEDULE "C"
NOTICE

TO THE RECEIVER:

Alvarez & Marsal Canada Inc.
Suite 1110, 250 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk / Duncan MacRae

Phone: (403) 538 4736 / 403 538 7514

Email: okonowalchuk@alvarezandmarsal.com / dmacrae@alvarezandmarsal.com

TAB 6



Court File No. CV-23-00707394-00CL

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

THE HONOURABLE MADAM

)

WEDNESDAY, THE 5TH

JUSTICE KIMMEL

)

DAY OF JUNE, 2024

)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TACORA RESOURCES INC.**

(Applicant)

**ORDER
(Sale Process Order)**

THIS MOTION, made by Tacora Resources Inc. (the "**Applicant**"), for an Order approving and ratifying the procedures for a sale process in respect of the Applicant attached hereto as Schedule "A" (the "**Sale Process**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicant dated May 31, 2024 (the "**Motion Record**"), the Affidavit of Heng Vuong sworn May 31, 2024, the Ninth Report of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**") dated June 3, 2024, and

ON HEARING the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd., and counsel for the Ad Hoc Group of Senior Noteholders, and such other counsel and parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale Process.

APPROVAL AND RATIFICATION OF THE SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process attached hereto as Schedule "A" is hereby approved and ratified.

4. **THIS COURT ORDERS** that any steps taken to date by the Applicant, the Financial Advisor, and the Monitor in the Sale Process are hereby ratified.

5. **THIS COURT ORDERS** that the Applicant, the Financial Advisor, and the Monitor are hereby authorized and directed to immediately continue with implementation of the Sale Process pursuant to the terms thereof, and to take any and all actions as may be necessary or desirable to implement and carry out the Sale Process in accordance with its terms and this Order.

6. **THIS COURT ORDERS** that each of the Applicant, the Financial Advisor, the Monitor and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Applicant, the Financial Advisor, or the Monitor, as applicable, in performing their obligations under the Sale Process, as determined by this Court.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Applicant, the Financial Advisor and the Monitor were and are hereby authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the Sale Process in these proceedings.

8. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the Sale Process, the Financial Advisor and the Monitor shall not take possession of the Property or be deemed to take possession of the Property.

PROTECTION OF PERSONAL INFORMATION

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicant, the Financial Advisor, the Monitor, and their respective advisors were and are hereby authorized and permitted to disclose and transfer to prospective Sale Process participants (each, an “**Sale Process Participant**”) and their advisors personal information of identifiable individuals (“**Personal Information**”), records pertaining to the Applicant’s past and current employees, and information on specific customers, but only to the extent desirable or required to negotiate or attempt to complete a transaction under the Sale Process (a “**Transaction**”). Each Sale Process Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit the use of such Personal Information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Applicant, the Financial Advisor, or the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Applicant, the Financial Advisor, or the Monitor. The Successful Bidder shall maintain and protect the privacy of such information and, upon closing of the Transaction contemplated in the Successful Bid, shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant, the Financial Advisor, or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicant, the Financial Advisor, or the Monitor.

GENERAL

10. **THIS COURT ORDERS** that the Applicant or the Monitor or any interested party may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under the Sale Process.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the

Financial Advisor, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant, the Financial Advisor, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant, the Financial Advisor, the Monitor, and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that the Applicant and Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.



Digitally signed
by Jessica Kimmel
Date: 2024.06.11
10:14:13 -04'00'

Schedule "A"

Procedures for the Sale Process

On October 10, 2023, Tacora Resources Inc. ("**Tacora**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Ontario Superior Court of Justice (Commercial List) in the City of Toronto (the "**Court**") pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"). Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") is acting as Tacora's financial advisor and investment banker.

On June 5, 2024, the Court granted an order (the "**Sale Process Order**") authorizing Tacora to undertake a sale process (the "**Sale Process**") to solicit offers or proposals for a sale transaction in respect of Tacora's assets (the "**Property**") and business operations (the "**Business**") to be conducted by the Financial Advisor, and supervised by the Monitor, in the manner set forth in these procedures (the "**Sale Procedures**").

Defined Terms

1. Capitalized terms used in the Sale Procedures and not otherwise defined herein have the meanings given to them in Appendix "A".

Sale Procedures

Opportunity

2. The Sale Process is intended to identify the highest and/or best offer for the sale of (a) all the shares of Tacora (the "**Shares**") to be implemented pursuant to a subscription agreement ("**Subscription Agreement**"), or (b) all or substantially all the Property and the Business pursuant to an asset purchase agreement ("**APA**") (the "**Opportunity**"). Tacora reserves the right to terminate the Sale Process at any time.

General

3. Except as set forth in these Sale Procedures, nothing in this Sale Process shall prohibit a secured creditor of Tacora (a) from participating as a Bidder in the Sale Process, or (b) committing to Bid its secured debt, including by way of a credit bid of some or all of its outstanding indebtedness under any loan facility (inclusive of interest and other amounts payable under such loan agreement to and including the date of closing of a definitive transaction) owing to such party ("**Credit Bid**").
4. Tacora, in consultation with the Financial Advisor and the Monitor, shall have complete discretion with respect to the provision of any information to any party or any consultation rights in connection with the Sale Process, provided that, no information regarding any Bids received shall be provided to any stakeholders of Tacora or their respective advisors other than in connection with a motion to approve the Successful Bid or Back-Up Bid, if applicable.

Timeline

5. The following table sets out the key milestones under the Sale Process, which may be extended from time to time by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, in accordance with the Sale Process.

Event	Timing
1. Access to VDR and Template Subscription Agreement and Template APA Bidders provided access to the VDR, subject to execution of an appropriate NDA and provided with the Template Subscription Agreement and the Template APA.	Access to the VDR has been and will be provided to parties on a rolling basis following request for access and execution of an appropriate NDA. Parties will be provided with the Template Subscription Agreement and the Template APA no later than June 21, 2024.
2. Bid Deadline Deadline for Bidders to submit binding definitive offers in accordance with the requirements of Section 10.	July 12, 2024.
3. Auction (if applicable)	July 16, 2024.
4. Approval Motion Hearing of Approval Motion in respect of Successful Bid.	July 26, 2024.
5. Outside Date – Closing Outside Date by which the Successful Bid must close.	To be determined by Tacora, in consultation with the Financial Advisor and the Monitor. Tacora will announce such date to Bidders in advance of the Bid Deadline (the “ Outside Date ”).

Solicitation of Interest

6. The following steps have been taken by Tacora, the Financial Advisor or the Monitor, as applicable:
- a notice of the Sale Process and any other relevant information that the Monitor, in consultation with Tacora and the Financial Advisor, considered appropriate regarding the Sale Process was posted by the Monitor on the Monitor’s Website; and
 - the Financial Advisor, in consultation with Tacora and the Monitor, (i) contacted financial and strategic parties that the Financial Advisor, believed

may be able to submit or participate in a Qualified Bid in connection with the Sale Process (each a **"Potential Bidder"**); and (ii) provided each Potential Bidder with a form of non-disclosure agreement satisfactory to the Financial Advisor, Tacora, the Monitor, and their respective counsel (an **"NDA"**).

7. Tacora, in consultation with the Financial Advisor and the Monitor, will prepare a template Subscription Agreement (the **"Template Subscription Agreement"**) and APA (the **"Template APA"**) to be used by Bidders in submitting a Bid. The Template Subscription Agreement and the Template APA will be provided to Bidders by no later than June 21, 2024.

Communication Protocol

8. Each Potential Bidder and Bidder is prohibited from communicating with any other Potential Bidder or Bidder and their respective affiliates and their legal and financial advisors regarding the Opportunity during the term of the Sale Process, without the consent of the Financial Advisor and the Monitor except as provided in these Sale Procedures (and for certainty, such consent granted prior to the date of approval of these Sale Procedures shall continue to apply without requirement for additional consent). Notwithstanding the terms of any NDA entered into by a Bidder, all Bidders shall comply with these Sale Procedures.
9. Notwithstanding the terms of any NDA entered into by a Bidder, the Financial Advisor may introduce any Bidder who expresses an interest in submitting a consortium or joint Bid, to one or more other Bidders. Any Bidder who is interested in submitting a consortium or joint Bid must confirm to the Financial Advisor that it will act exclusively with another Bidder or consortium of Bidders submitting a single Bid.

Bids

10. A Bidder that wishes to make a definitive transaction proposal (a **"Bid"**) shall submit a binding offer that complies with all of the following requirements to the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by the Financial Advisor not later than 5:00 p.m. (Eastern Time) on July 12, 2024, or such later date as determined by Tacora, in consultation with the Financial Advisor and with the consent of the Monitor (the **"Bid Deadline"**). Such Bid shall be a **"Qualified Bid"** if it meets all of the following criteria:
 - a) it has been duly executed by all required parties;
 - b) it is received by the Bid Deadline;
 - c) it is binding and includes a letter confirming that the Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (i) completion of the transaction, and (ii) the Outside Date, subject to such further extensions as may be agreed to under the applicable Subscription Agreement or APA, with the consent of the Monitor;
 - d) it is in the form of a duly authorized and executed Subscription Agreement or

APA, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by Tacora), together with a redline to the Template Subscription Agreement or the Template APA;

- e) the Bid includes:
 - i. the purchase price and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - ii. details regarding any consideration which is not cash, including to the extent applicable, appropriate documentation supporting a Credit Bid;
 - iii. any contemplated purchase price adjustment;
 - iv. written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to Tacora, in consultation with the Financial Advisor and the Monitor;
 - v. a description of the Shares or Property, as applicable, that is subject to the transaction and any of the Property expected to be excluded;
 - vi. a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
 - vii. it identifies whether the Bidder intends to assume or exclude the Offtake Agreement (with or without amendment) and if the Bidder intends to exclude the Offtake Agreement, the alternative offtake terms required to complete the transaction contemplated by the Bid;
 - viii. information sufficient for Tacora, in consultation with the Financial Advisor and the Monitor, to determine that the Bidder has sufficient financial ability to complete the transaction contemplated by the Bid;
 - ix. a description of the Bidder's intentions for the Business, including any plans or conditions related to Tacora's management and employees; and
 - x. any other terms or conditions of the Bid that the Bidder believes are material to the transaction;
- f) it is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;
- g) it contains no conditions other than as contemplated by the Template Subscription Agreement or the Template APA;
- h) it fully discloses the identity of each entity that will be entering into the

transaction, or that is sponsoring, participating in or benefiting from such Bid, and such disclosure shall include, without limitation: (i) in the case of a Bidder formed for the purpose of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Bidder and the terms and participation percentage of such equity holder's interest in such Bid; and (ii) the identity of each entity that has or will receive a benefit from such Bid from or through the Bidder or any of its equity holders and the terms of such benefit;

- i) it is accompanied by a non-refundable good faith cash deposit (the “**Deposit**”) equal to 10% of the total cash component of the purchase price contemplated under the Bid which shall be paid to the Monitor and held in trust pursuant to Section 29 hereof until the earlier of (i) closing of the Successful Bid or Back-Up Bid, as applicable; and (ii) rejection of the Bid pursuant to Section 27;
 - j) it includes acknowledgements and representations of the Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and Tacora prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or Tacora or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive transaction agreement executed by Tacora;
 - k) it includes an acknowledgement that the Bid is made on an “as-is, where-is” basis; and
 - l) it contains such other information as may be reasonably requested by Tacora, in consultation with the Financial Advisor and the Monitor.
11. Nothing in these Sale Procedures shall preclude a Bidder from submitting more than one Bid.

Assessment of Bids

12. Bids may not be modified, amended, or withdrawn after the Bid Deadline without the written consent of Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Bid for Tacora, its creditors and other stakeholders.
13. Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, shall reject any Bid if it is determined that such Bid does not constitute a Qualified Bid, provided that, Tacora, in consultation with the Financial Advisor and with the consent of the Monitor, may:
- a) waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Qualified Bid; or

- b) seek to combine separate Bids to create a Qualified Bid.

No Bidder shall have any expectation that Tacora will (i) waive strict compliance with any one or more of the requirements; or (ii) seek to combine separate Bids to create a Qualified Bid.

14. If Tacora receives two (2) or more Qualified Bids, Tacora may, in consultation with the Financial Advisor and the Monitor, undertake one or more of the following steps:
 - a) request or negotiate one or more amendments to any Qualified Bids;
 - b) accept one of the Qualified Bids (the "**Successful Bid**" and the offeror making such Successful Bid the "**Successful Bidder**") and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid with Successful Bidder and select the next highest or otherwise best Qualified Bid to be a back-up bid (the "**Back-Up Bid**" and such bidder, the "**Back-Up Bidder**"). For greater certainty, Tacora shall not be required to select a Back-Up Bid; or
 - c) identify the highest and/or best of the Qualified Bids received and such Qualified Bid will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**").
15. If Tacora receives only one (1) Qualified Bid, such Qualified Bid shall be declared the Successful Bid and an Approval Motion shall be brought forthwith.

Auction

16. If Tacora, in consultation with the Financial Advisor and the Monitor, determines that an Auction should be held, Tacora shall conduct an Auction commencing at 9:00 a.m. (Eastern time) on July 16, 2024, or such other date as determined by Tacora, in consultation with the Financial Advisor and the Monitor, at the offices of Stikeman Elliott LLP located at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario M5L 1B9.
17. Except as otherwise permitted in Tacora's discretion, in consultation with the Financial Advisor and the Monitor, only Tacora, the Monitor, the Auction Bidders and, in each case, their respective advisors, counsel and other representatives, will be entitled to attend the Auction. Only Bidders who submitted a Qualified Bid are eligible to participate in the Auction. Each Auction Bidder shall identify to the Financial Advisor and the Monitor at least 24 hours in advance of the Auction who will attend the Auction on their behalf. The identity of each Bidder participating in the Auction (each Bidder participating in the Auction being an "**Auction Bidder**") will be disclosed to all other Auction Bidders. Each Auction Bidder shall keep the identities of each other Auction Bidder confidential.
18. Except as otherwise set forth herein, Tacora, in consultation with the Financial Advisor and the Monitor, may waive and/or employ and announce at the Auction additional rules that it considers reasonable under the circumstances for conducting the Auction, provided that such rules are: (a) disclosed to each Auction Bidder; and

- (b) designed, in Tacora's business judgement, to result in the highest and/or best offer.
19. Tacora will arrange for the actual bidding at the Auction to be transcribed or recorded. Each Auction Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction. The Auction shall be conducted on an open basis, such that all material terms of each Auction Bid at the Auction will be fully disclosed to all other Auction Bidders throughout the entire Auction.
 20. Each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with Tacora, another Bidder or any other person, without the consent of the Financial Advisor and the Monitor, regarding the Sale Process. Further, each Auction Bidder shall disclose all co-bidding or team bidding arrangements, whether formal or informal, among the Auction Bidder and any third party or financing source. The identity of any and all co-bidders or team bidders involved in submitting any Auction Bid shall be disclosed on the record at the Auction.
 21. Bidding at the Auction will continue in minimum increments in excess of the Opening Bid determined from time to time by Tacora, in consultation with the Financial Advisor and the Monitor. Each overbid (an "**Auction Bid**") announced on the record at the Auction shall be deemed to be an irrevocable offer capable of acceptance by Tacora and may not be withdrawn or amended by the Auction Bidder without the consent of Tacora, in consultation with the Financial Advisor and the Monitor.
 22. For the purposes of facilitating bidding, Tacora, in consultation with the Financial Advisor and the Monitor, may (but is not required to) ascribe a monetary value to any non-cash considerations of any of the Auction Bids, including by way of example, to different levels of conditionality to closing. If requested by Tacora, in consultation with the Financial Advisor and the Monitor, each Auction Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at an increased purchase price.
 23. The Auction will continue until the bidding has concluded and Tacora, in consultation with the Financial Advisor and the Monitor, determine the Successful Bid. Tacora, in consultation with the Financial Advisor and the Monitor shall determine which Auction Bidder has submitted the highest and/or best Auction Bid of the Auction. At the conclusion of bidding, the Auction will be closed, and the highest and/or best Auction Bid, as determined by Tacora, in consultation with the Financial Advisor and the Monitor, will be Successful Bid and the next highest and otherwise best Auction Bid will be the Back-Up Bid, as applicable. Any Auction Bids submitted after the conclusion of the Auction will not be considered.
 24. In determining the Successful Bid at the Auction, the Financial Advisor, Tacora and the Monitor may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Auction Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Auction Bid in relation to other Auction Bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) the closing conditions and other factors affecting the

speed, certainty and value of the transaction; (g) planned treatment of stakeholders, including employees; (h) the assets included or excluded from the Auction Bid; (i) any restructuring costs that would arise from the Auction Bid; (j) the likelihood and timing of consummating the transaction; (k) the capital sufficient to implement post-closing measures and transactions; and (l) any other factors that the Financial Advisor, Tacora, and Monitor may deem relevant in their sole discretion.

25. Upon selection of the Successful Bidder and a Back-Up Bidder, if any, Tacora will require the Successful Bidder and the Back-Up Bidder, if any, to execute, as soon as practicable, an amended Subscription Agreement or APA, as applicable, that reflects its final Bid and any other modifications submitted and agreed to during the Auction.
26. If the Successful Bidder fails to consummate the Successful Bid for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and Tacora will proceed with the transaction pursuant to the terms of the Back-Up Bid. Any Back-Up Bid shall remain open for acceptance until the earlier of completion of the transaction or the Outside Date.
27. All Qualified Bids (other than the Successful Bid and the Back-Up Bid, if any) shall be deemed rejected by Tacora on and as of the date of the execution of the definitive documents contemplated by the Successful Bid by Tacora.
28. The Monitor shall supervise the Sale Process as outlined herein. Any disputes relating to a disagreement regarding or clarification required as to the interpretation or application of these Sale Procedures, the construction and enforcement of an Auction Bidder's Auction Bid and/or executed transaction documents, the responsibilities of the Monitor, the Financial Advisor or Tacora hereunder, shall be determined by the Court and each Auction Bidder shall be deemed to have consented to the jurisdiction of the Court in connection with any such disputes. The Court will have jurisdiction to hear such matters and provide advice and directions, upon application of the Monitor or Tacora or any other interested party with a hearing which shall be scheduled on not less than three (3) Business Days' notice.

Deposits

29. All Deposits will be retained by the Monitor and deposited in an interest bearing trust account. The Deposit paid by the Successful Bidder and Back-Up Bidder whose Bid(s) is/are approved at the Approval Motion will be dealt with in accordance with the definitive documents for the transaction contemplated by the Successful Bid or the Back-Up Bid, as applicable, and will be non-refundable, other than in the circumstances set out in the Successful Bid or Back-Up Bid, as applicable. The Deposits (and any interest thereon) of Qualified Bidders not selected as the Successful Bidder or Back-Up Bidder will be returned to such Qualified Bidders within five (5) Business Days after the selection of the Successful Bidder or such earlier date as may be determined by the Monitor, in consultation with the Financial Advisor and Tacora. The Deposit of the Back-Up Bidder, if any, shall be returned to the Back-Up Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Bid.

Approval Motion

30. The Approval Motion shall be heard on July 26, 2024. At the Approval Motion, Tacora shall seek the Approval Order.
31. Prior to the Approval Motion, the Monitor shall provide the Court with a report providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion.

“As Is, Where Is”

32. Any sale of the Shares, Business, and/or Property, as applicable, will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by Tacora, the Financial Advisor or the Monitor, or their advisors or agents, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder or Back-Up Bidder, if any, executed by Tacora. None of Tacora, the Financial Advisor or the Monitor, or their advisors or agents, including the Financial Advisor, make any representation or warranty as to the information contained in any teaser letter, any management presentation or the VDR, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder or Back-Up Bidder, if any, executed by Tacora. Each Bidder is deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding the Business and Property prior to making its Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale agreement executed by Tacora.

No Entitlement to Expense Reimbursement or Other Amounts

33. Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

Jurisdiction

34. Upon submitting a Bid, the Bidder shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the Sale Process and the terms and conditions of these Sale Procedures and any Bid.
35. None of Tacora, the Financial Advisor or the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Sale Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.

APPENDIX “A”

DEFINED TERMS

- (a) “**APA**” shall have the meaning attributed to it in Section 2;
- (b) “**Approval Motion**” means the motion seeking approval by the Court of the Successful Bid;
- (c) “**Approval Order**” means an order of the Court approving, among other things, if applicable, the Successful Bid and the consummation thereof;
- (d) “**Auction Bid**” shall have the meaning attributed to it in Section 21;
- (e) “**Auction Bidder**” shall have the meaning attributed to it in Section 17;
- (f) “**Back-Up Bid**” shall have the meaning attributed to it in Section 14.a);
- (g) “**Back-Up Bidder**” shall have the meaning attributed to it in Section 14.a);
- (h) “**Bid**” shall have the meaning attributed to it in Section 10;
- (i) “**Bidder**” means a Potential Bidder interested in the Opportunity who has executed an NDA with Tacora;
- (j) “**Bid Deadline**” shall have the meaning attributed to it in Section 10;
- (k) “**Business**” shall have the meaning attributed to it in the preamble;
- (l) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (m) “**CCAA**” shall have the meaning attributed to it in the preamble;
- (n) “**CCAA Proceedings**” shall have the meaning attributed to it in the preamble;
- (o) “**Court**” shall have the meaning attributed to it in the preamble;
- (p) “**Credit Bid**” shall have the meaning attributed to it in Section 3;
- (q) “**Deposit**” shall have the meaning attributed to it in Section 10.i);
- (r) “**Financial Advisor**” shall have the meaning attributed to it in the preamble;
- (s) “**Initial Order**” shall have the meaning attributed to it in the preamble;
- (t) “**Monitor**” shall have the meaning attributed to it in the preamble;
- (u) “**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/Tacora>;
- (v) “**NDA**” shall have the meaning attributed to it in Section 6.b);

- (w) “**Note Indentures**” means collectively, (a) the indenture dated as of May 11, 2021, and second supplemental indenture dated February 16, 2022, among Tacora and Computershare Trust Company, N.A., as successor to the initial trustee and collateral agent, pursuant to which Tacora issued \$225,000,000 of senior notes bearing interest at a rate of 8.25%; (b) the amended and restated base indenture dated May 11, 2023, as supplemented by the first supplemental indenture dated May 11, 2023, and the second supplemental indenture dated May 11, 2023, pursuant to which Tacora issued \$27,000,000 of senior priority notes bearing interest at a rate of 13.00%, with 9.00% being paid via cash and 4.00% being paid via payment-in-kind; (c) the third supplemental indenture dated June 23, 2023; and (d) the fourth supplemental indenture dated September 8, 2023.
- (x) “**Offtake Agreement**” means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended;
- (y) “**Opening Bid**” shall have the meaning attributed to it in Section 14;
- (z) “**Opportunity**” shall have the meaning attributed to it in Section 2;
- (aa) “**Outside Date**” shall have the meaning attributed to it in Section 5;
- (bb) “**Potential Bidder**” shall have the meaning attributed to it in Section 6.b);
- (cc) “**Property**” shall have the meaning attributed to it in the preamble;
- (dd) “**Qualified Bid**” shall have the meaning attributed to it in Section 10;
- (ee) “**Sale Process Order**” shall have the meaning attributed to it in the preamble;
- (ff) “**Sale Process**” shall have the meaning attributed to it in the preamble;
- (gg) “**Sale Procedures**” shall have the meaning attributed to it in the preamble;
- (hh) “**Shares**” shall have the meaning attributed to it in Section 2;
- (ii) “**Subscription Agreement**” shall have the meaning attributed to it in Section 2;
- (jj) “**Successful Bid**” shall have the meaning attributed to it in Section 14.a);
- (kk) “**Successful Bidder**” shall have the meaning attributed to it in Section 14.a);
- (ll) “**Template APA**” shall have the meaning attributed to it in Section 7;
- (mm) “**Template Subscription Agreement**” shall have the meaning attributed to it in Section 7; and
- (nn) “**VDR**” means a confidential virtual data room in relation to the Opportunity that will be made available by Tacora to Bidders that have executed an NDA.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TACORA RESOURCES INC.

(Applicant)

Court File No. CV-23-00707394-00CL

	ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDINGS COMMENCED AT TORONTO
	ORDER (Sale Process Order)
	STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9 Ashley Taylor (LSO #39932E) Tel: 416-869-5236 Email: ataylor@stikeman.com Lee Nicholson (LSO #66412I) Tel: 416-869-5604 Email: leenicholson@stikeman.com Natasha Rambaran (LSO #80200N) Tel: 416-869-5504 Email: nrambaran@stikeman.com Philip Yang (LSO #82084O) Tel: 416-869-5593 Email: pyang@stikeman.com Counsel to Tacora Resources Inc.



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00707394-00CL

HEARING

DATE: June 5, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TACORA RESOURCES INC

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

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ENDORSEMENT OF JUSTICE KIMMEL:

1. Tacora seeks approval of:
 - a. a Sale Process Order; and
 - b. a Stay Extension Order, that, among other things: (i) extends the Stay Period to July 29, 2024; (ii) authorizes Tacora to reallocate KERP Funds that were earmarked for Key Employees who have resigned from Tacora to certain other Key Employees; and (iii) seals the confidential appendix 1 (the "Confidential Appendix") to the Ninth Report of the Monitor dated June 3, 2024 (the "Ninth Report"), which contains details of the reallocated KERP.
2. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Company's factum filed in support of this motion.

The Stay Extension Order

3. The Stay Extension Order is supported by the Monitor and not opposed.
4. The court may grant an extension of the Stay Period pursuant to s. 11.02(2) and (3) of the CCAA "for any period that the court considers necessary" where the applicant satisfies the court that: (a) circumstances exist that make the order appropriate; and (b) it has acted, and is acting, in good faith and with due diligence.
5. Tacora has acted, and continues to act, in good faith and with due diligence to advance its restructuring within these CCAA Proceedings. The proposed extension of the Stay Period is necessary for Tacora, together with its advisors and the Monitor, to continue to review and advance its potential alternatives and pursue a value-maximizing transaction. Tacora's Updated Cash Flow Forecast reflects that, subject to the indicated assumptions, Tacora is forecast to have sufficient liquidity to fund its obligations and the costs of the CCAA Proceedings through to the end of the proposed extension of the Stay Period. The Monitor's supports the requested extension to the Stay Period and no creditor or other stakeholder is objecting to it.
6. The same justifications apply as when the court approved the last extension of the Stay Period to June 24, 2024. See *Tacora Resources Inc. (Re)*, 2024 ONSC 2454, at paras. 52-54.
7. Tacora is also seeking the court's approval to reallocate the KERP amounts under the existing KERP Funds (that were allocated to the Key Employees who have resigned) to certain other Key Employees. Key Employees are critical to the Company's operations and restructuring activities. The additional Key

Mine Employee is similarly critical to the Company's operations and restructuring activities. There is a risk that the Key Employees may pursue other employment opportunities if the KERP amounts under the existing KERP Funds are not reallocated to the remaining Key Employees. Finding alternative, qualified individuals to replace the Key Employees will be challenging, disruptive, costly, and time consuming for the Company.

8. To date, none of the KERP Funds that were designated under the original order approving the KERP have been paid out. Orders of this nature, amending the list of eligible employees under a KERP and reallocating KERP funds, have been made in other cases. See for example, *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, 2023 QCCS 834, 82 PCAS Patient Care Automation Services Inc (Re), 2012 ONSC 2423 at para. 10.
9. The reallocation of the KERP Funds is appropriate, reasonable and justified in the circumstances, and the terms, conditions and amounts of such reallocation are in line with KERP previously approved by this court and employee retention plans approved in other CCAA proceedings. The same justifications exist for the proposed amendments to KERP as existed when it was originally approved. See *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at para. 158 (d).
10. Similarly, the same justifications apply to the sealing of the Confidential Appendix to the Monitor's Ninth Report containing the amounts to be reallocated to eligible employees under the KERP as applied to the sealing of the confidential exhibits in respect of the KERP when it was originally approved. See *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at paras. 159-162.
11. I have signed the Stay Extension Order, dated and effective June 5, 2024.

Sale Process Order

12. Without attracting sufficient capital to make the capital improvements that Tacora needs to increase production, Tacora will continue to generate losses. It has been reiterated many times in the course of this proceeding that the only way in which Tacora can become a long-term sustainable operation is for it to attract investors and/or purchaser to make the necessary investments in the Scully Mine.
13. As of the week ending June 23, 2024, Tacora is forecasted to add at least another \$125 million of secured debt to its balance sheet through the DIP Facility on top of its already overleveraged capital structure that existed at the time that it commenced these CCAA Proceedings. The increasing amount of debt will make the restructuring more difficult to complete as third-party investors will need to invest incremental further amounts to address the DIP financing prior to investing the required amounts into the Company.
14. Tacora is fielding questions from trade creditors and employees. It has already lost three of its Key Employees since the CCAA filing. As the second largest employer in the Labrador West region, delaying emergence from these CCAA Proceedings will result in uncertainty for a significant number of employees. This delay also introduces uncertainty and the potential for distractions in Tacora's dealings with frustrated trade creditors that are needed for its continued operations. The concerns of these and other stakeholder groups continue to loom large while Tacora seeks an alternative going-concern solution.
15. Tacora continues to pursue a consensual restructuring with its two most significant stakeholders: Cargill and the Ad Hoc Group of noteholders. As has been said before, however, Tacora cannot do so without also advancing a sale process in parallel to identify one or more investors and/or purchasers and a transaction to allow Tacora to exit these CCAA Proceedings. Tacora has worked with its financial and other advisors and the Monitor, in consultation with its noteholders and Cargill, to come up with the proposed Sale Process.
16. The proposed Sale Process builds upon Tacora's pre-CCAA efforts to sell or restructure and the post-CCAA filing court approved Solicitation Process that resulted in a successful bid that was not completed. As the Monitor explains in its Ninth Report, the timeline of the Sales Process was designed to identify an actionable transaction within the time frame of its projected remaining availability under

the DIP Facility. The Monitor has reiterated in its Ninth Report that completing the restructuring so that Tacora can emerge from this CCAA proceeding as soon as possible is of critical importance to the Company and its stakeholders.

17. The Monitor is of the view that the Sale Process, including the possibility of an Auction, can be achieved within that time frame and provides for an open, fair and transparent process with an appropriate level of independent oversight. The Monitor also believes that the proposed Sale Process will encourage and facilitate bidding by interested parties and that it is reasonable in the circumstances.
18. Tacora's proposed Sale Process is designed to be efficient and focused. If a successful transaction emerges from it, Tacora will be seeking court approval on July 26, 2024, before the now extended Stay Period expires. Tacora is focused on running an efficient Sale Process that strikes a balance between the much needed certainty of an executable transaction and the need for flexibility to try to secure the best available transaction.
19. Cargill is the only party that is objecting to the Proposed Sale Process. Cargill has suggested changes, with explanations, which Tacora has responded to.
20. Some of Cargill's requested changes were accepted by the Company in advance of the June 5, 2024 hearing. Some further suggested changes from Cargill were accepted at the urging of the court during the hearing. Importantly, Tacora has agreed that it will not dictate what type of transaction the bids should be for, a share deal (RVO) or an asset deal (APA). Tacora has agreed to remove the fourth recital that Cargill was objecting to and to amend section 2 and make conforming changes elsewhere, as needed, to reflect this further change that will allow bidders to choose their transaction structure (for example in section 7 so as to provide for templates to be given to bidders for both types of transactions).
21. Some of the concerns raised by Cargill about the proposed Sale Process that it seeks to have addressed through its remaining suggested changes require the court's input and direction as they have not been accepted by Tacora.
22. As a general matter, the specific terms of the Sale Process are a matter of business judgment for Tacora. It has proposed the Sale Process with the benefit of the advice of its legal and other advisors, and input from the Monitor and both the Ad Hoc Group and Cargill. The court will not lightly interfere with the mechanics of the proposed Sale Process that the Company has proposed based on these inputs, absent some demonstration of unfairness or concerns that could undermine the eventual approval of any transaction that comes out of the Sale Process.
23. Subsection 36(3) of the CCAA sets out certain factors for the Court to consider in approving a sale. Section 36 does not directly address the factors a court should consider when determining whether to approve a sale process, however, such criteria can be evaluated in light of the considerations that will ultimately apply when seeking approval of a sale transaction, including whether the process is reasonable in the circumstances, whether the Monitor approved the process, and the extent to which the creditors were consulted. See *Brainhunter Inc. (Re)*, 2009 CanLII 72333, at para. 16.
24. The remaining disputed suggested changes to Tacora's proposed Sale Process are discussed below, with reference corresponding section numbers in the Procedures for Sale Process.
25. Changes to section 2: Cargill requests that section 2 expressly allow for a CCAA plan as a transaction option in the Sale Process. While Tacora is not specifying a CCAA plan as a transaction option in the Sale Process, its counsel stated in court that if a viable plan is submitted by any party, whether in conjunction with a bid submitted in the Sale Process or outside of it, the Company will consider the option of pursuing a plan. To that end, the Company has retained the ability to adjust the Sale Process or terminate it if there is an option presented that is not strictly within the Sale Process requirements that the Company, in consultation with the Monitor, deems to be viable and worth pursuing. I agree with Tacora that expressly providing for a CCAA plan option overly complicates the Sale Process and the suggested changes to this end need not be included Sale Process. There is sufficient flexibility in the process to allow for a CCAA plan to be put forward and for any viable plan that is presented to be considered and pursued if deemed appropriate.

26. Changes to section 5: Cargill would like the date of the sale approval motion in section 5 to be stated to be subject to change to a later date (such "other" date rather than such "earlier" date) set by the court. The court remains concerned about timing. The July 26, 2024 approval date is within the current Stay Period extension. I agree with Tacora that this date should be presented and considered to be a firm date. If contingencies arise, they can be addressed but they need not be expressly provided for now.
27. Changes to section 10 (e)(vii): Cargill would like the conditions of qualified bids in section 10 (e) (vii) to include repayment of the DIP in full. The Company is concerned that introducing the repayment of the DIP as a condition of a Qualifying Bid could have a chilling effect on other prospective bidders and give Cargill an advantage in the bidding process, which could compromise the fairness of the Sale Process. This is not dissimilar to the Ad Hoc Group's attempt to introduce a topping credit bid into the first Solicitation Process, which the court rejected (see *Tacora Resources Inc (Re)*, 2023 ONSC 6126 at paras. 121 – 123). Cargill does not need this condition to protect its position, nor is it entitled to this level of protection as a DIP lender (see *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226, at paras. 30-32). It can make a back-stop credit bid if it is concerned that a bid might be accepted that is below the value of the DIP. Tacora's counsel confirmed in court that it remains open to Cargill to make a credit bid within the Sale Process, in conjunction with or in addition to any other bid that Cargill may wish to make in the Sale Process. What Cargill will not be entitled to do is decline to participate at all in the Sale Process and then come forward afterwards and try to make a credit bid.
28. Changes to section 10 (g): Cargill argues, regarding section 10 (g), that a bid should not be excluded from being considered a Qualified Bid simply because a potential bidder adds in different or additional required conditions to their transaction documents beyond those included in the transaction templates. The company retains the ability to accept non-compliant Bids, but does not want to invite bidders to submit bids with additional or new conditions. Added conditions will make the comparisons of the Bids more difficult. Further, the last accepted bid was lost because of a condition; having been burned once, Tacora would like to discourage conditions beyond those that it will include in its templates that it considers to be achievable. Since the goal is an executable transaction and Tacora is best situated to identify the conditions it can tolerate, bidders should be incentivized to structure their bids accordingly. Cargill's proposed change to s. 10 (g) is not necessary or appropriate.
29. Changes to section 12: Nor are Cargill's proposed changes to section 12 necessary or appropriate, particularly since in that same section, Tacora has expressly retained the ability to waive strict compliance with any one or more of the specified Bid requirements and deem such non-compliant Bid to be a Qualified Bid. This already qualifies the earlier language indicating that a bid that is not a Qualified bid "shall" be rejected. The existing language strikes the appropriate balance and "shall" need not be changed to "may" in section 12.
30. Changes to section 16: With respect to section 16, Cargill believes that the DIP Lender, as a significant stakeholder, should be permitted to attend the auction. Tacora plans to restrict attendance at the auction to participating bidders, and it will not be open to stakeholders unless they are also bidders. Cargill will be permitted to attend the auction if it is participating as a bidder in the auction but otherwise does not have an automatic right to participate in it. If it wants to be present at the auction it will need to be a participating bidder. The company and the Monitor will communicate with stakeholders who are not part of the auction as needed. The auction process needs to be fair and focused on the objective of maximizing value for the Company and its stakeholders from the participating bidders. No justification was offered for Cargill to be there in any other capacity. If issues arise in the auction process that require input from Cargill in some other capacity (for example, as Dip Lender, or as contractual counterparty or as creditor), or input from any other stakeholder not otherwise participating in the auction process, the Company has said it will reach out to them.
31. Changes to sections 18-22: Cargill has asked that the auction procedures at sections 18-22 should be deleted and left to be settled at a later time rather than pre-determined before any bids have been received. Cargill has not raised any specific objections to the proposed auction procedures in these sections. The timelines for the Sale Process and auction procedures are such that it is better to have as

much determined in advance as possible. Flexibility has been retained in section 17 for Tacora to revise the auction procedures later if need be.

32. In summary, none of the remaining changes to the Sale Process that Cargill requested that have not already been agreed to by Tacora need to be made.
33. The Sale Procedures within the proposed Sale Process, with the amendments that have now been agreed to, are fair and reasonable:
 - a. They will best serve the interests of the Company's stakeholders as a whole by enhancing the prospects of a successful restructuring;
 - b. They have been approved by the Monitor;
 - c. The significant creditors and stakeholders, including the Ad Hoc Group and Cargill, were consulted.

See *Brainhunter*, at para. 16. The factors that support the approval of the proposed Sale Process are set out in detail in the Company's factum for this motion and in the Monitor's Ninth Report.

34. The Sale Process is approved. Once Tacora has made the changes that it agreed to make to the Sale Process, the revised Sale Process Order may be submitted to me to be signed.

Cargill's Global Process Motion

35. Cargill advised the other parties before the June 5, 2024 hearing that it no longer intended to proceed with its Global Process Motion on June 26, 2024 (and as a result, Cargill did not file a notice of motion by the May 31 date fixed by this Court). Tacora and the Monitor advised that the motion could only be withdrawn with prejudice. Cargill has responded that “[w]e reserve our rights to contest a RVO application and file materials to oppose such matter depending on the facts.”
36. Tacora and the Monitor are concerned that Cargill may seek to advance the same arguments about the legal availability of an RVO that it had indicated it would raise in the Global Process Motion in its opposition to any RVO transaction that may emerge as the successful transaction in the Sale Process. Tacora and the Monitor seek the court’s direction on this issue, and specifically for a direction that the decision not to proceed with the Global Process Motion is with prejudice to Cargill.
37. Cargill says that it reconsidered its position on this motion after the court ruled on May 24, 2024 that its Disclaimer Motion would be heard on June 26, 2024, rather than it being deferred as Cargill had suggested it be. Cargill's position is that Tacora and the Monitor have presented the court with no authority for the imposition of a term of "with prejudice" on its decision not to proceed with a motion that was never brought, and says that it cannot be prevented from raising the intended arguments on its Global Process Motion in the future. Cargill says that it has been transparent about what its arguments would be on the Global Process Motion and the parties will thus not be surprised by them if they are raised in response to future motions (including a sale approval motion) that have not yet been brought based on future facts that are not currently known.
38. The court shares the practical concerns that the Company and the Monitor have raised. The Global Process Motion, like the RVO Preliminary Motion, were presented at the May 24, 2024 case conference to be the flip side of the same hypothetical coin. They were framed as legal issues that the court could determine in advance, namely:
 - a. Whether an RVO is legally impermissible if the Cargill Offtake Agreement has not been disclaimed (to be decided by the RVO Preliminary Motion: does the Offtake Agreement have to have been disclaimed for it to be assigned to ResidualCo under an RVO?); OR
 - b. Whether an RVO is legally impermissible if the Cargill Offtake Agreement has been disclaimed (to be decided by the Global Process Motion: If the Offtake Agreement is disclaimed, does that preclude any assignment of liability associated with that agreement to ResidualCo?).

39. In its Aide Memoire for the May 24, 2024 case conference, Cargill described its Global Process Motion as follows:
- Cargill will bring a motion seeking a declaration that, as a point of law, an RVO transaction structure is not available to a debtor where (i) there is a large unsecured creditor in a position to vote against a CCAA plan; (ii) that unsecured creditor opposes the RVO; and (iii) there is an unsecured CCAA plan alternative which provides for consideration to all affected unsecured creditors in the form of restructured shares or other consideration. If granted, Cargill believes this declaration eliminates an RVO transaction structure which vests out the Offtake Agreement over its objection. This motion should be heard and determined prior to expending the time and resources on a disclaimer dispute that may never be necessary. The Global Process Motion should be heard on June 26, 2024, unless matters are resolved in the interim.
40. It was proposed that the proposed Global Process Motion would proceed on the basis of assumed facts (including that the disclaimer is allowed thereby creating a large unsecured liability in favour of Cargill and that there is an unsecured CCAA plan alternative; the latter assumption of a CCAA plan alternative remains a possibility based on the earlier discussion in this endorsement that allows for the presentation of a CCAA plan even though it is not expressly invited as one of the transaction options in the Sale Process).
41. The court did not accept Cargill's submission on May 24, 2024 that its Disclaimer Motion should be deferred. But it did accept that the issues raised by the Global Process Motion, if successful, could eliminate the possibility of any RVO transaction structure. The court's objective in timetabling these motions (the Global Process Motion, the Disclaimer Motion and the RVO Preliminary Motion) all together was to clear away any uncertainty about the legal impermissibility of an RVO transaction tied to the existence or non-existence of the Cargill Offtake Agreement so as not to waste the time of bidders in the Sale Process on an RVO transaction structure if it is determined to be legally impermissible for either of the reasons postulated by Cargill.
42. The court's May 24, 2024 case management direction was made with a view to a just, expeditious, streamlined and orderly process for an eventual sale approval motion that will need to be heard on a single day shortly after the conclusion of the Sale Process if there is a successful bid coming out of that process. In these multi-issue proceedings, issues need to be sequenced and determined in an orderly manner. That is part of the court's case management function.
43. If Cargill wishes to raise the issues that it identified for its Global Process Motion then it may deliver its Global Process Motion Record on June 11, 2024 when the next round of materials are due for the June 26, 2024 motions. If it elects not to bring that motion, it will be foreclosed from raising the intended arguments on that motion at the sale approval motion if the successful transaction in the Sale Process is a share (RVO) deal.
44. Following the court's decision on the June 26, 2024 motions, if an RVO transaction structure is determined to be legally permissible, any RVO transaction that is brought to the court for approval following the Sale Process will remain subject to the court's discretion and all of the *Harte Gold Corp. (Re)*, 2022 ONSC 653 factors that must be considered in that context. That is a given. No one is suggesting otherwise. Conversely, if an RVO transaction structure is determined to be legally impermissible for any of the grounds raised, the court understands that Tacora does not intend to include an RVO transaction option in the Sale Process and, thus, there will be no RVO transaction for the court to consider at the July 26, 2024 sale approval hearing.
45. What will not be permitted in the context of these proceedings and having regard to the lengthy and complex procedural history and the particular timing and liquidity constraints that Tacora is operating

under, is for an issue that was flagged as a question of legal impermissibility to be deferred and raised by Cargill after an RVO transaction has been negotiated with a successful bidder.

46. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.

June 7, 2024

TAB 7



Court File No. BK25-00000237-0033

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

TUESDAY, THE 29TH

)

JUSTICE KERSHMAN

)

DAY OF APRIL, 2025

**IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL TO CREDITORS OF 11449346
CANADA INC. o/a P3 PANEL COMPANY AND
12574764 CANADA LTD. o/a UNITED EDGE
STRUCTURAL COMPONENTS**

ORDER

THIS MOTION made by 11449346 Canada Inc. o/a P3 Panel Company and 12574764 Canada Ltd. o/a United Edge Structural Components (together, the “**Companies**”, which term refers to the Companies and either of them), for an order, among other things, (i) approving the terms of a sale and investment solicitation process (the “**SISP**”) included as **Schedule “A”** hereto, (ii) authorizing and directing Albert Gelman Inc., in its capacity as the Companies’ proposal trustee (in such capacity, the “**Proposal Trustee**”), to complete the SISP with the assistance of the Companies, (iii) extending the time for the Companies to file a proposal to creditors by 45 days, to and including June 18, 2025, and (iv) approving the first report of the Proposal Trustee dated April 7, 2025 and the appendices thereto (the “**First Report**”), the second report of the Proposal Trustee dated April 24, 2025 and the appendices thereto (the “**Second Report**”), and the activities of the Proposal Trustee set out therein, was heard this day by videoconference in Ottawa, Ontario.

ON READING the affidavit of Dylan Sliter sworn April 22, 2025 and exhibits thereto, the First Report and appendices thereto, and the Second Report and appendices thereto.

ON HEARING the submissions of counsel for the Companies, counsel for the Proposal Trustee, counsel for Phoenix Building Components Inc. (the “**Interim Lender**”), and such other counsel that were present, no one else appearing for any other person although duly served.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and all materials filed in respect of this motion is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF SALE AND INVESTMENT SOLICITATION PROCESS

2. **THIS COURT ORDERS** that the SISP terms attached as **Schedule “A”** to this Order (as may be amended in accordance with such terms) are hereby approved.

3. **THIS COURT ORDERS** that the Companies and Proposal Trustee are hereby authorized, empowered and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with the SISP and the terms of this Order.

4. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the *Bankruptcy and Insolvency Act* (the “**BIA**”) or as an officer of the Court, the Companies, the Proposal Trustee, and their respective affiliates, officers, directors, partners, employees, advisors, counsel and agents, shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being

“Persons” and each being a “Person”) in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Companies and the Proposal Trustee, as applicable, as determined by this Court.

5. **THIS COURT ORDERS** that the Proposal Trustee or the Companies may apply to this Court for directions with respect to the SISP at any time during the term thereof.

6. **THIS COURT ORDERS** that, pursuant to section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS), the Proposal Trustee and the Companies are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Companies and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals (“**Personal Information**”) to prospective bidders or offerors and to their advisors, including human resources and payroll information, records pertaining to the Companies’ past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction under the SISP. Each prospective bidder or offeror to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation.

Each prospective bidder or offeror to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP.

EXTENSION OF TIME

8. **THIS COURT ORDERS** that the time for the Companies to make a proposal to their creditors, and the time for the Proposal Trustee to file such proposal with the official receiver, be and is hereby extended to and including June 18, 2025, in accordance with section 50.4(9) of the BIA.

APPROVAL OF PROPOSAL TRUSTEE REPORTS AND ACTIVITIES

9. **THIS COURT ORDERS** that the Proposal Trustee's First Report and Second Report, and the activities of the Proposal Trustee described therein, are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

10. **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction to give effect to this Order and to assist the Companies, the Proposal Trustee

and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Companies, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that each of the Companies and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, without the need for entry and filing, but the Companies shall use best efforts to enter and file a copy of this Order in the Consolidated Court File as soon as reasonably practicable.

Order issued on April 29th, 2025



KERSHMAN, J.

SCHEDULE "A"

SISP Terms

[See next page.]

Schedule "A"

SALE AND INVESTMENT SOLICITATION PROCESS

Introduction

1. 11449346 Canada Inc. o/a P3 Panel Company ("**P3**") and 12574764 Canada Ltd. o/a United Edge Structural Components ("**United Edge**", and, together with P3, the "**Companies**") operate an integrated business specializing in the design, manufacturing and installation of innovative, state-of-the-art prefabricated wall, floor and roof systems for homes, garages, condo & apartment buildings and other construction projects, including new builds and renovation projects (the "**Business**").
2. 9695443 Canada Inc. ("**LandCo**") owns the land and buildings out of which the Companies operate the Business, municipally known as 109 & 123 Poonamalie Road, Township of Rideau Lakes, Ontario, and bearing parcel register numbers 444128-0193 (LT) and 44128-0194 (LT) (the "**Land and Facilities**"). LandCo is a related party with partly common management and ownership with the Companies.
3. On April 3, 2025, the Companies each filed a notice of intention to make a proposal ("**NOI**") under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Albert Gelman Inc. was appointed as the Companies' proposal trustee (in such capacity, the "**Proposal Trustee**"). LandCo has not filed an NOI and is not undergoing any insolvency proceeding.
4. As part of a restructuring of the Companies, the Companies wish to canvass the market for offers that will maximize value for their stakeholders, including, without limitation, offers for a sale, investment, recapitalization, restructuring, refinancing or reorganization, or any combination of the foregoing, of all or part of the property and assets of P3 and/or United Edge (collectively, the "**Property**"), the Business, and/or shareholding P3 and/or United Edge ("**Shareholding**"). Accordingly, the Companies, with the assistance of the Proposal Trustee, developed this sale and investment solicitation process (the "**SISP**").
5. LandCo wishes, as part of the SISP, to canvass the market for offers for sale or other transactions with respect to LandCo and/or the Land and Facilities, including, without limitation, as part of coordinated transactions involving the acquisition of the Property, the Business, and/or Shareholding. The SISP accordingly includes due diligence information with respect to LandCo and the Land and Facilities.
6. On April 29, 2025, the Ontario Superior Court of Justice (the "**Court**") granted an order (the "**SISP Order**") that, among other thing, approved the SISP and authorized the Proposal Trustee, with the assistance of the Companies, to perform the SISP.
7. This document sets out the terms of the SISP. A copy of the SISP Order can be obtained at [www.albertgelman.com/filedocuments] (the "**Proposal Trustee's Website**").

8. The SISP will be implemented by the Proposal Trustee. All inquiries regarding the SISP must be directed to the Proposal Trustee using the contact information set out in **Schedule "A"**.

Application of SISP to LandCo

9. LandCo has agreed to, and will, provide due diligence information for inclusion in the SISP as an opportunity to market and receive offers with respect to LandCo and/or the Land and Facilities (a "**LandCo-Involving Transaction**"), including, without limitation, as part of coordinated transactions involving the acquisition of the Property, the Business, and/or Shareholding.
10. Unless expressly provided otherwise, the terms of this SISP are suggested but not mandatory as regards any offer that exclusively contemplates an acquisition of, or other transaction with respect to, LandCo and/or the Land and Facilities (and that, for avoidance of doubt, does not include the Companies' Property, the Business, or Shareholding) (a "**Land-Exclusive Transaction**"). For avoidance of doubt, a Land-Exclusive Transaction shall not be subjected to the provisions of this SISP for the sole reason that it is conditional on, coordinated with, or contemplates any separate transaction(s) with respect to Property, Business or Shareholding of any of the Companies.
11. For avoidance of doubt, nothing in the SISP shall be interpreted as:
- (a) subjecting any Land-Exclusive Transaction to the approval of the Court;
 - (b) extending to LandCo or its business and assets, in any respect, any responsibility, liability or power of the Proposal Trustee;
 - (c) affecting any and all rights of LandCo, including, without limitation,
 - (i) to consider, negotiate, accept, reject, and complete, at any time, in whole or in part, with or without the involvement of the Proposal Trustee, any LandCo-Involving Transaction and/or Land-Exclusive Transaction, whether or not such transaction emerges from this SISP or otherwise; and
 - (ii) to market LandCo and/or the Land and Facilities in any way, including any additional or parallel efforts outside of this SISP, and complete any transaction emerging from such efforts, at any time;
 - (d) affecting any and all rights of Desjardins in its capacity as secured lender of LandCo and registered mortgagee over the Land and Facilities; and
 - (e) imposing or extending any obligation, liability, responsibility or restriction to LandCo or its business and assets, in any respect.

12. For further avoidance of doubt, but without limiting the generality of the foregoing:
 - (a) in this SISP, the terms, requirements, criteria and qualification of Qualified Bid, Qualified Bidder, Excluded Bid, Successful Bid, Successful Bidder, Approval and Vesting Order, Court-Approved Bid, Bid Criteria, Bid Deadline, and Deposit (each as defined in this SISP) do not apply with respect to and do not comprise, in any respects, LandCo and any Land-Exclusive Transaction; and
 - (b) paragraphs 47 to 51 and 57 do not apply with respect to LandCo and any Land-Exclusive Transaction.
13. Notwithstanding paragraphs 9 to 12 above, in case of doubt or disagreement, the Proposal Trustee shall have exclusive jurisdiction to determine, in its sole discretion after consultation with the Companies, and without any liability, whether any section of this SISP is applicable to and/or comprises any person, step, correspondence, offer or thing.

Opportunity

14. In accordance with the BIA and the SISP Order, upon completion of the SISP, the Companies and the Proposal Trustee shall bring a motion to the Court for an order (an “**Approval and Vesting Order**”) that, among other things, approves and authorizes the Companies to complete the transactions contemplated in the Successful Bid(s).
15. Pursuant to the BIA, the Court has jurisdiction to grant an Approval and Vesting Order that, in addition:
 - (a) vests the assets purchased pursuant to the approved Successful Bid(s) in and to the purchaser(s); and/or
 - (b) vests shares and control of the Companies in and to purchaser(s);

in each case, free and clear of security interests, liens, mortgages, charges or other encumbrances (“**Encumbrances**”), save those the purchaser elects to assume, if any.
16. In this SISP, the term “**Opportunity**” refers to the opportunity to (i) acquire all or part of the Property, Business and/or Shareholding pursuant to an Approval and Vesting Order free and clear of Encumbrances, and (ii) conduct due diligence, make an offer, and complete a LandCo-Involving Transaction or Land-Exclusive Transaction, including, but not limited to, as part of coordinated transactions for the Companies’ Property, Business and/or Shareholding.
17. Transaction(s) completed pursuant to an Approval and Vesting Order will be on an “as is, where is” basis and without any representations or warranties of any kind, nature or description whatsoever by the Proposal Trustee, the Companies, or any of their respective directors, officers, agents, advisors, or other representatives (“**Representatives**”), unless, in the case of the Companies, it is otherwise agreed in writing in a definitive agreement.

Timeline

18. The following table sets out the deadlines in the SISP. Among other deadlines, **the “Bid Deadline” is Monday, June 30, 2025, at 5:00 p.m. (Ottawa time).**

<u>Milestone</u>	<u>Deadline</u>
Set up of virtual data room; commencement of marketing and due diligence	By May 1, 2025
Bid Deadline	Monday, June 30, 2025, at 5:00 pm (Ottawa time)
Auction (if any)	Within 5 Business Days of the Bid Deadline
Selection of Successful Bid(s)	Within 5 Business Days of the Bid Deadline or auction, as applicable
Court Approval of Successful Bid(s)	As soon as possible following selection of the Successful Bid
Closing of Successful Bid(s)	As soon as possible following Court approval

19. The Proposal Trustee may extend the above deadlines by up to two weeks without Court approval, except the Bid Deadline, which the Proposal Trustee can extend only with the approval of the Companies' Court-approved interim lender (the “**DIP Lender**”).

Marketing and Solicitation of Interest

20. By May 1, 2025, the Proposal Trustee shall, with the assistance of the Companies if requested by the Proposal Trustee:
- issue a press release for the SISP and the Opportunity with Canada Newswire, designating dissemination in Canada and major financial centers in the United States;
 - cause a notice of the SISP to be published, and advertise the Opportunity, in all publications, journals, newsletters and other forums, electronic and otherwise, which the Proposal Trustee considers appropriate;
 - prepare a form of non-disclosure agreement (“**NDA**”);
 - with the assistance of the Companies, prepare a list of parties potentially interested in the Opportunity (“**Known Interested Parties**”);

- (e) develop a template asset purchase agreement to assist in the making and evaluation of bids (the "**Template APA**"); and
- (f) prepare a package for dissemination to Known Interested Parties, including a copy of the NDA and such other information and documents as the Proposal Trustee believes appropriate to maximize interest and engagement, describing the Opportunity and inviting Known Interested Parties to participate in the SISP.

Virtual Data Room

21. By May 1, 2025, the Proposal Trustee shall, with the assistance of the Companies if requested by the Proposal Trustee, set up, populate and maintain a virtual data room (the "**VDR**") containing the Template APA and such other documents and information as the Proposal Trustee, in consultation with the Companies, believes necessary or appropriate to allow interested parties to conduct effective due diligence with respect to the Opportunity.

Information which Potential Bidders Must Provide to the Proposal Trustee

22. Any party who wishes to participate in the SISP must provide to the Proposal Trustee:
- (a) an NDA executed by the party;
 - (b) a letter setting out the contact information for the party, the identity of the party, and the identity of its direct and indirect principals and beneficiaries;
 - (c) a written acknowledgment of the terms of the SISP; and
 - (d) such further and other information and documents as the Proposal Trustee, in its sole discretion, may deem advisable or necessary with respect to any particular party, including, without limitation, information and documents evidencing the party's financial and other wherewithal to make a viable offer and complete a potential transaction pursuant to the SISP.
23. In addition to the foregoing, any shareholder, officer or director of any of the Companies, and any party who the Proposal Trustee determines to be dealing with any of the Companies in an insider or non-arm's length fashion, directly or indirectly (each, an "**Insider**"), alone or with others (including, as the case may be, with non-Insiders), who intends to participate in the SISP (except if exclusively in respect of a Land-Exclusive Transaction, as determined by the Proposal Trustee in its sole discretion), shall indicate to the Proposal Trustee, in writing, being an Insider, and the nature of its relationship with the Companies, prior to any participation in the SISP.
24. Each party who provides the above information to the satisfaction of the Proposal Trustee at any time prior to the Bid Deadline, as confirmed in writing by the Proposal Trustee, constitutes a "**Potential Bidder**".

Due Diligence

25. The Proposal Trustee shall provide and facilitate access to the VDR to each Potential Bidder.
26. Any requests and inquiry respecting due diligence, including, for example, requests for additional information or documents, requests for site visits, requests for meetings and direct communications with management, etc., must be made solely to the Proposal Trustee. The Proposal Trustee shall facilitate such requests to the extent reasonable, as determined by the Proposal Trustee in its discretion.
27. The Proposal Trustee may, for any reason which the Proposal Trustee deems, in its sole discretion, necessary or sufficient, including, without limitation, to protect the integrity of the SISP or to protect confidential or sensitive documents or information from being collected or used for any reason other than good faith participation in the SISP (such as by competitors to gain an advantage), (i) limit any Potential Bidder's access to information or documents during the SISP, including without limitation information or documents available in the VDR and/or to any other Potential Bidder; and (ii) prohibit or eliminate a Potential Bidder from participating in the SISP, upon which that party shall cease to be a Potential Bidder.
28. Potential Bidders shall solely rely on their own independent review, investigation, and/or inspection of all information and documents, in the VDR or otherwise, during the SISP. The Companies, the Proposal Trustee, and their Representatives make no representation or warranty whatsoever (including without limitation with regard to accuracy or completeness) as to any document or information reviewed, relied upon, or overlooked in any way by a Potential Bidder during or with respect to the SISP, including, without limitation, whether or not such information or document is provided or made available by the Proposal Trustee and/or the Companies.

Qualified Bids

29. An offer in the SISP (except any Land-Exclusive Transaction) shall only be considered a "**Qualified Bid**" if it meets all the below criteria (collectively, the "**Bid Criteria**"), as determined by the Proposal Trustee, in its sole discretion.
 - (a) Basic requirements:
 - (i) it is submitted by a Potential Bidder;
 - (ii) it is received by the Proposal Trustee by electronic mail, at the coordinates indicated in Schedule "A", on or before the Bid Deadline.
 - (b) Contractual requirements:
 - (i) it is submitted in the form of a complete, final, binding, duly authorized, executed, definitive and ready-to-be-countersigned contract containing all the terms of the proposed transaction(s), including, without limitation, the

purchased assets, the excluded assets, the assumed liabilities, the excluded liabilities, the assigned contracts, the excluded contracts, the purchased shares, the cancelled shares, and the consideration payable, together with all applicable schedules, such that there is no further agreement, document or schedule to be negotiated, drafted, or entered into in order for the contemplated transaction(s) to be completed, subject only to Court approval, and save customary closing documents in like transactions;

- (ii) it is not subject to any further due diligence, financing condition, or other conditions, apart from (i) Court approval, (ii) such conditions as are customary in insolvency transactions, and (iii) any necessary regulatory or similar approvals that may be applicable;
 - (iii) it provides for an outside closing date no later than ten (10) business days after an Approval and Vesting Order is granted with respect to the transaction(s) contemplated in the bid; and
 - (iv) it provides that it is binding and irrevocable until the completion of all Successful Bid(s) transactions that target overlapping assets, if any.
- (c) deposit requirement: it is provided with a non-refundable deposit (“**Deposit**”) of at least \$150,000, by wire transfer to an account specified by the Proposal Trustee, to be held by the Proposal Trustee in a non-interest-bearing account in accordance with the provisions of this SISP applicable to Deposits, set out below.
- (d) requirements regarding supporting documentation and statements:
- (i) it is provided with a “redline” or “blackline” comparison to the Template APA;
 - (ii) it is provided with written evidence of all approvals and completion of all governance steps required with respect to the submission, execution, delivery and closing of the transaction(s) contemplated in the bid;
 - (iii) it is provided with a proposed form of Approval and Vesting Order and “redline” or “blackline” comparisons between such form and the Commercial List model approval and vesting order;
 - (iv) it is provided with evidence of financial and other wherewithal to complete the transaction(s) contemplated in the bid, including, but not limited to, (i) evidence of unconditional availability of funds prior to closing, and (ii) the particulars of the source of the funds or financing for all cash consideration payable under the bid, including, as the case may be, the lender with regard to any debt financing and the contributors (and their ultimate shareholders or beneficiaries) with regard to any other funding, provided that, for greater certainty, the offer may not be conditional on financing;

- (v) it is provided with specific statements concerning the intended treatment of employees, suppliers, customers, existing agreements and contracts, or any other stakeholder which the Proposal Trustee requests the Potential Bidder to specifically address;
 - (vi) it is provided with a description of any regulatory or other third-party approvals required to complete the proposed transaction(s), the time within which the Potential Bidder expects to receive such approvals, and the actions that the Potential Bidder will take to ensure obtaining such approvals prior to the selection of the Successful Bid(s);
 - (vii) it includes acknowledgments and representations of the Potential Bidder that (i) it has had an opportunity to conduct any and all due diligence prior to making its bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection in making its bid, and (iii) it does not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory, or otherwise, regarding any aspect of the transaction(s) or the completeness of any information provided or obtained in connection with the SISP, except such minimal representations and warranties as are customary in insolvency transactions, as determined by the Proposal Trustee in its sole discretion, if expressly contemplated in executed transactions documents.
30. Promptly after the Bid Deadline, the Proposal Trustee, in consultation with the Companies and the DIP Lender (subject to paragraph 49 below), shall review and assess all bids received to determine which one(s) constitute Qualified Bids, if any. A participant who submits a Qualified Bid, as determined by the Proposal Trustee, is referred to as a **"Qualified Bidder"**.
31. The Proposal Trustee may, in its sole discretion, waive non-compliance with one or more of the Bid Criteria at any time.
32. Any offer which the Proposal Trustee deems, in its sole discretion, not to be a Qualified Bid, shall constitute an **"Excluded Bid"**.

Negotiation of Stalking Horse Bid

33. At any time, the Proposal Trustee, in consultation with the Companies, may negotiate with a Potential Bidder or a Qualified Bidder towards a "stalking horse" or "floor" bid in the SISP.
34. If the Proposal Trustee, in consultation with the Companies and the DIP Lender, determines that a Potential Bidder or a Qualified Bidder has put forward an offer that would constitute an appropriate stalking horse bid in the SISP, the Companies shall, if the Proposal Trustee recommends it in its sole discretion, bring a motion to the Court for approval of such bid as the stalking horse bid in the SISP, and for approval of modifications to this SISP reflecting a stalking horse bid structure.

Selection of Successful Bid(s) and Auction

35. At any time, the Proposal Trustee may, in its sole discretion, in consultation with the Companies and the DIP Lender (subject to paragraph 49 below), negotiate with Qualified Bidders; however, the Proposal Trustee shall be under no obligation to negotiate with, or extend similar terms to, any Qualified Bidder.
36. If there are at least two Qualified Bid which target overlapping assets, then the Proposal Trustee may hold and preside over an auction among Qualified Bidders as soon as practicable after the Bid Deadline. Any such auction shall proceed on such terms, including, without limitation, any minimum increment, as the Proposal Trustee deems, in its sole discretion, fair and commercially efficacious. The Proposal Trustee shall provide an outline of the terms of the auction to all Qualified Bidders prior to the beginning of an auction. The Proposal Trustee shall have discretion to dispense with the requirement for an auction.
37. As soon as practicable following the auction, or, if the Proposal Trustee determines that no auction is necessary, as soon as practicable after the Bid Deadline, the Proposal Trustee, in consultation with the Companies, shall select the highest or otherwise best Qualified Bid(s) as the “**Successful Bid(s)**”.
38. Upon selection of the Successful Bid(s), the Proposal Trustee shall promptly inform all Qualified Bidders as to whether their bid constitutes a Successful Bid. A Qualified Bidder who submitted a Successful Bid is referred to as a “**Successful Bidder**”.
39. All Qualified Bids that are not Successful Bids shall remain open and available for acceptance and selection as a Successful Bid until the Proposal Trustee confirms in writing that all Successful Bid(s) transactions that target overlapping assets have been completed to the satisfaction of the Proposal Trustee.

Transaction Approval Motion Hearing

40. As soon as practicable after selection of the Successful Bid(s), the Companies shall make a motion to the Court for Approval and Vesting Order(s) with respect to Successful Bid(s).

Closing of Successful Bid(s)

41. Upon issuance of an Approval and Vesting Order, the Companies and the applicable Successful Bidder(s) shall complete the transaction(s) contemplated in the Successful Bid(s) with dispatch, and such transaction shall close by no later than ten (10) business days after the issuance of the Approval and Vesting Order.
42. Each Qualified Bid other than the Successful Bid(s) shall be deemed rejected upon the Proposal Trustee confirming in writing that all Successful Bid transactions that target overlapping assets have been completed to the satisfaction of the Proposal Trustee.

Deposits

43. The Proposal Trustee shall retain all Deposit(s) in a non-interest-bearing trust account.
44. Deposits in respect of Successful Bid(s) for which an Approval and Vesting Order is granted ("**Court-Approved Bid(s)**") shall be credited towards the purchase price upon closing of the transactions contemplated thereby.
45. Unless provided otherwise in a final agreement, Deposits in respect of Court-Approved Bids that fail to close shall be forfeited and fully earned by the Companies, as liquidated damages and not as a penalty, if the failure to close is preponderantly attributable to a breach or fault on the part of the Successful Bidder, as determined by the Proposal Trustee in its sole discretion.
46. The Proposal Trustee shall return, without interest:
 - (a) all Deposits submitted in respect of Excluded Bids as soon as practicable after the determination of Qualified Bids;
 - (b) all Deposits in respect of Qualified Bids that are not Successful Bids immediately upon completion of all Successful Bid(s) transactions that target overlapping assets, as confirmed in writing by the Proposal Trustee; and
 - (c) all Deposits in respect of Successful Bid(s) for which no Approval and Vesting Order is granted immediately upon the Companies deciding, in consultation with the applicable Successful Bidder and with the approval of the Proposal Trustee, that no further efforts shall be made to obtain such an Approval and Vesting Order, including any appeal, provided that the failure to obtain an Approval and Vesting Order is not preponderantly attributable to a breach or fault on the part of the Successful Bidder, as determined by the Proposal Trustee in its sole discretion.

Supervision of SISP and Communications During SISP

47. The Proposal Trustee shall generally manage communications and facilitate the delivery of documents and information during the SISP, including, among other things, with respect to due diligence requests.
48. During the SISP, all communications, requests and inquiries regarding the SISP and the Opportunity must be addressed solely to the Proposal Trustee, and not to the Companies. Communications between the Companies and participants in the SISP, directly and indirectly, shall only be permitted to the extent authorized by the Proposal Trustee, in its sole discretion. If a party communicates with the Companies, the Companies shall immediately refer the party to the Proposal Trustee and cease communicating with this party save to the extent authorized by the Proposal Trustee. The Proposal Trustee may, in its sole discretion, exclude from the SISP any participant who attempts to communicate with the Companies or its Representatives rather than the Proposal Trustee, directly or indirectly, without the Proposal Trustee's prior approval.

49. No Insider and no participant in the SISP, nor the DIP Lender despite any provision of this SISP or otherwise, shall be entitled to any information with respect to any other participant in the SISP or their bids or involvement in the SISP save as may be communicated by the Proposal Trustee, in Court materials, or pursuant to the BIA.
50. Paragraph 49 shall cease to apply to an Insider or the DIP Lender, as applicable, upon, and only upon, the occurrence of one of the following:
 - (a) the Insider or the DIP Lender, as applicable, provides to the Proposal Trustee a written, signed and irrevocable affirmation that the Insider or the DIP Lender, as applicable, will not submit a bid in the SISP and will not provide any information whatsoever in respect of the SISP, the Companies, or their property, business and affairs, to any third party, together with any further and other agreements and assurances as the Proposal Trustee may, in its sole discretion, require from the Insider;
 - (b) all bids submitted by the Insider or the DIP Lender, as applicable, become Excluded Bids;
 - (c) no Approval and Vesting Order is obtained in respect of a Successful Bid submitted by the Insider or the DIP Lender, as applicable, and the Companies' decided, with the approval of the Proposal Trustee, that no further efforts shall be made to obtain such an Approval and Vesting Order, including any appeal; or
 - (d) all Successful Bid(s) transactions that target overlapping assets with a Qualified Bid submitted by the Insider or the DIP Lender, as applicable, are completed.
51. If it is discovered at any time during the SISP that a Potential Bidder is or involves an Insider who failed to provide the information required in paragraph 23 prior to any involvement in the SISP, that Potential Bidder shall be immediately excluded from any participation in the SISP, and any Qualified Bid submitted by such Insider shall immediately be deemed an Excluded Bid.

Amendments to SISP

52. Except as provided in paragraph 19, the Proposal Trustee may, in consultation with the Companies, make any modification to the SISP that the Proposal Trustee considers appropriate in the circumstances, provided that the Proposal Trustee shall seek Court approval for any modification which the Proposal Trustee considers, in its professional judgment, material.

General

53. The Companies and their principals and employees shall fully cooperate with and follow the instructions of the Proposal Trustee during the SISP, and shall, among other things, promptly provide all information and documents requested by the Proposal Trustee.

54. Other than as specifically set forth in a definitive agreement in writing, the SISP does not, and will not be interpreted to, create any contractual or other relationship among P3, United Edge, LandCo, the Proposal Trustee, any participant in the SISP, or any other party.
55. The Companies and the Proposal Trustee shall not be liable for and will not pay any claim for a brokerage commission, finder's fee or like payment in respect of any transaction completed pursuant to the SISP. Any such claim shall be the sole liability of the applicable bidder(s).
56. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with their participation in the SISP, including without limitation the submission of any bid, due diligence activities, completion of a Successful Bid, preparation for and attendance at Court, and any negotiations or actions whether or not they lead to the consummation of a transaction.
57. All participants in the SISP (including Qualified and Successful Bidder(s)) shall be deemed to have consented to the exclusive jurisdiction of the Court with respect to any matter or dispute related to the SISP, including without limitation with respect to the qualification of bids, the construction and enforcement of the SISP, and the transaction(s) contemplated pursuant to Successful Bid(s).
58. Any approvals required pursuant to the SISP are in addition to, and not in substitution for, any other approval required by the BIA or any other statute or as otherwise required at law in order to implement a transaction.

SCHEDULE 'A'

**Proposal Trustee Contact
Information**

Contact	Contact Information
Albert Gelman Inc. 250 Ferrand Dr., Suite 403 Toronto, Ontario M3C 3G8 The Proposal Trustee	Chris Rowe (416) 504-1650, ext 135 crowe@albertgelman.com

IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL TO CREDITORS OF 11449346
CANADA INC. o/a P3 PANEL COMPANY AND 12574764
CANADA LTD. O/A UNITED EDGE STRUCTURAL
COMPONENTS

Court File No.: BK25-00000237-0033

ONTARIO
**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Ottawa

ORDER

Perley-Robertson, Hill & McDougall LLP/s.r.l.
1400 – 340 Albert Street
Ottawa, ON K1R 0A5

Joël Turgeon LS#: 80984R
jturgeon@perlaw.ca
Tel: 613.238.2022 x.424

Lawyers for 11449346 Canada Inc. o/a P3 Panel
Company and 12574764 Canada Ltd. o/a United
Edge Structural Components

IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL TO CREDITORS OF 11449346
CANADA INC. o/a P3 PANEL COMPANY AND 12574764
CANADA LTD. O/A UNITED EDGE STRUCTURAL
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jturgeon@perlaw.ca
Tel: 613.238.2022 x.424

Lawyers for 11449346 Canada Inc. o/a P3 Panel
Company and 12574764 Canada Ltd. o/a United
Edge Structural Components

TAB 8



Court File No. CV-23-00709180-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 15 th
	)	
JUSTICE MYERS	)	DAY OF JANUARY, 2026

BETWEEN

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEARTLAKE LIMITED, 2402871
ONTARIO INC., VANDYK – THE RAVINE LIMITED, VANDYK – LAKEVIEW-DXE-
WEST LIMITED AND VANDYK – LAKEVIEW-DXE-EAST LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(Sale Process Approval)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property legally described in Schedule “A” to the Third Amended & Restated Order (Appointing Receiver) of this Court dated October 15, 2024 (as amended, restated and/or supplemented from time to time, the “**Receivership Order**”) (the “**Real Property**”) and all present and future assets, undertakings

and personal property of Vandyk – Lakeview-DXE-West Limited (“**Lakeview West**”), Vandyk – Heartlake Limited (“**Heartlake**”), Vandyk – The Ravine Limited (“**Ravine**”), Vandyk – Uptowns Limited (“**Uptowns**”) and 2402871 Ontario Inc. located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited (“**Lakeview East**” and, together with Ravine, Heartlake, Uptowns and Lakeview West, the “**Vendors**”) related to any of the Real Property, pursuant and subject to the terms of the Receivership Order (collectively with the Real Property, the “**Property**”), for an order, *inter alia*, approving a sale process in respect of the Property of the Vendors (the “**Subject Property**”), which, for greater certainty, excludes the Property of 2401871 Ontario Inc., in the form attached hereto as **Schedule “A”** (the “**Sale Process**”), was heard this day by judicial videoconference via Zoom videoconference in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Ninth Report of the Receiver dated December 29, 2025 (the “**Ninth Report**”) and on hearing the submissions of counsel for the Receiver, the Applicant and the other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service of Marleigh Dick affirmed December 30, 2025,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Ninth Report.

SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process is hereby approved and the Receiver is hereby authorized and directed to implement the Sale Process pursuant to the terms thereof and is hereby authorized and directed to perform its obligations thereunder and to do all things reasonably necessary to perform its obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction under the Sale Process.

4. [OMITTED]

5. **THIS COURT ORDERS** that, in conducting the Sale Process, the Receiver shall have all of the benefits and protections granted to it under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, the Receivership Order and any other Order of this Court in the within proceeding.

STALKING HORSE PURCHASE AGREEMENT

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered, *nunc pro tunc*, to enter into the stalking horse agreement of purchase and sale dated December 29, 2025 (the “**Stalking Horse Purchase Agreement**”) between the Receiver and the Applicant, KingSett Mortgage Corporation (“**KingSett**”), in the form attached as and Appendix “B” to the Ninth Report

with such minor amendments as may be acceptable to each of the parties thereto; provided that nothing herein approves the sale and the vesting of any Subject Property to the KingSett pursuant to the Stalking Horse Purchase Agreement and that the approval of any sale and vesting of any such Subject Property shall be considered by this Court on a subsequent motion made to this Court if the transaction set out in the Stalking Horse Purchase Agreement is the Successful Bid pursuant to the Sale Process.

PIPEDA

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Receiver and its advisors are hereby authorized and permitted to disclose and transfer to prospective Sale Process participants that are party to a non-disclosure agreement with the Receiver (each, a “**Sale Process Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each Sale Process Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Receiver, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Receiver. The bidder(s) with Successful Bid(s) shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the business and/or property of the Vendors acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by

the Vendors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

SEALING

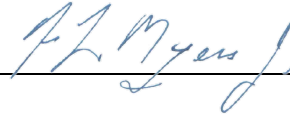
8. **THIS COURT ORDERS** that Confidential Appendix “1” and Confidential Appendix “2” to the Ninth Report shall be sealed, kept confidential and not form part of the public record until the earlier of: (i) closing of the transaction for the last unit for sale in the applicable Project; and (ii) further Order of this Court sought on not less than seven (7) days notice to the Receiver.

GENERAL

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

A handwritten signature in blue ink, appearing to read "FL Myers", is written over a horizontal black line.

Justice FL Myers

Digitally signed by Justice FL
Myers
Date: 2026.01.15 15:25:34 -05'00'

SCHEDULE “A”

SALE PROCESS

Sale Process

1. KSV Restructuring Inc. is the receiver and manager (in such capacity, the “**Receiver**”) in proceedings with Court File No. CV-23-00709180-00CL, without security, of the real property legally described in Schedule “A” to the Third Amended & Restated Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 15, 2024, as amended, and certain other assets, undertakings and personal property of Vandyk – Lakeview-DXE-West Limited (“**Lakeview West**”), Vandyk – Heartlake Limited (“**Heartlake**”), Vandyk – The Ravine Limited (“**Ravine**”), Vandyk – Uptowns Limited (“**Uptowns**”), Vandyk – Lakeview-DXE-East Limited (“**Lakeview East**”, and collectively with Ravine, Heartlake, Uptowns and Lakeview West, the “**Vendors**”), and 2402871 Ontario Inc.
2. On January 15, 2026, the Court granted an order (the “**Sale Process Order**”) that, among other things:
 - a) authorized the Receiver to implement a sale process in accordance with the terms hereof (“**Sale Process**”) in respect of the real property legally described in “**Schedule A**” hereto (the “**Subject Real Property**”) and all present and future assets, undertakings, and personal property of Ravine, Heartlake, Uptowns, and Lakeview West Limited located at, related to, used in connection with or arising from or out of the Subject Real Property, together with all agreements of purchase and sale executed by Lakeview East related to any of the Subject Real Property (collectively with the Subject Real Property, the “**Subject Property**”); and
 - b) authorized and empowered the Receiver to enter into the Stalking Horse Agreement of Purchase and Sale between the Receiver and the Applicant, KingSett Mortgage Corporation (“**KingSett**”), dated December 29, 2025 (the “**Stalking Horse Purchase Agreement**”) solely for the purposes of acting as the Stalking Horse Bid (as defined below) in the Sale Process.
3. Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the Sale Process Order or the Stalking Horse Purchase Agreement, as the case may be. A copy of the Sale Process Order can be found at:
<https://www.ksvadvisory.com/experience/case/vandyk>.
4. This Sale Process sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the sale transaction contemplated by the Stalking Horse Purchase Agreement will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought.
5. This Sale Process shall be conducted by the Receiver, with the assistance of CBRE Limited (the “**Agent**”) and the Receiver and the Agent shall be entitled to receive all information in relation to the Sale Process.
6. Parties who wish to have their bids considered must participate in this Sale Process as conducted by the Receiver with the assistance of the Agent.

7. This Sale Process will be conducted such that the Receiver and the Agent will:
- a) disseminate marketing materials and a process letter to potentially interested parties identified by the Receiver and the Agent;
 - b) solicit interest from parties with a view to such interested parties entering into non-disclosure agreements in form and substance satisfactory to the Receiver in its sole discretion (each a “**NDA**”) (parties shall only obtain access to the data room and be permitted to participate in this Sale Process if they execute an NDA and agree to the additional measures that are required by the Receiver to protect competitively sensitive information);
 - c) provide applicable parties with access to a data room containing diligence information; and
 - d) request that such parties (other than KingSett) submit (i) a letter of intent to bid that identifies the potential bidder and a general description of the Subject Property that would be the subject of the bid, the proposed consideration, and that reflects a reasonable prospect of culminating in a Qualified Bid (as defined below), as determined by the Receiver (a “**LOI**”), by the LOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 9 below, as determined by the Receiver (a “**Qualified Bid**”), by the Qualified Bid Deadline (as defined below).
8. This Sale Process shall be conducted subject to the terms hereof and the following key milestones, in each case subject to Court availability:
- a) the Receiver to commence the solicitation process – as soon as practicable following the granting of the Sale Process Order;
 - b) the deadline to submit a LOI – 5:00 p.m. Eastern Time on March 2, 2026 (the “**LOI Deadline**”);
 - c) the deadline to submit a Qualified Bid – 5:00 p.m. Eastern Time on April 1, 2026 (the “**Qualified Bid Deadline**”);
 - d) the Receiver to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – as soon as practicable upon determining that an Auction is required;
 - e) the Receiver to hold an Auction (if applicable) – within three (3) business days of the Receiver determining that the Auction will take place;
 - f) Approval and Vesting Order (as defined below) – Receiver to bring a motion by no later than fifteen (15) calendar days following the selection (or deemed selection) of the Successful Bid; and
 - g) the closing of the Successful Bid – as soon as reasonably practicable after the Approval and Vesting Order or such later date as agreed to among the Receiver and KingSett (the “**Outside Date**”), except that the Outside Date for the Stalking Horse

Bid shall be, if the Stalking Horse Bid is selected as the Successful Bid, the Closing Date (as defined in the Stalking Horse Purchase Agreement).

9. In order to constitute a Qualified Bid, a bid or group of bids must comply with the following:
- a) it provides consideration (the “**Consideration Value**”) that, in the opinion of the Receiver, provides for a superior economic result for the Vendors’ estates (or, if for one of the Vendor’s assets, such Vendor’s estate);
 - b) it provides a detailed schedule that identifies, with specificity, the composition and sources of the Consideration Value and any assumptions that could reduce the net consideration payable including details of any material liabilities that are being assumed or being excluded;
 - c) it provides for the closing of the transaction contemplated thereunder by no later than the Outside Date;
 - d) it contains:
 - i. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s) and/or sponsors;
 - ii. a purchase agreement duly executed and binding on the bidder;
 - iii. a redline of the purchase agreement to the Stalking Horse Purchase Agreement;
 - iv. evidence of authorization and approval from the bidder’s board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder’s equityholder(s) in form and substance reasonably satisfactory to the Receiver;
 - v. disclosure of any connections or agreements with the Vendors or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, member or known equity security holder of the Vendors or any of their affiliates; and
 - vi. such other information as may be reasonably requested by the Receiver;
 - e) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the next-highest or otherwise best Qualified Bid as compared to the Successful Bid (such bid, the “**Back-Up Bid**”) it shall only remain irrevocable until selection of the Successful Bid;
 - f) it provides that the bid will serve as the Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of: (i) closing of the Successful Bid, or (ii) closing of the Back-Up Bid;

- g) it provides written evidence of a bidder's ability to fully fund and consummate the transaction (including financing required, if any, prior to the closing of the transaction to finance the receivership proceedings) and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the Successful Bid;
- h) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- i) it is not conditional upon:
 - i. approval from the bidder's board of directors (or comparable governing body) or, if applicable, equityholder(s);
 - ii. the outcome of any due diligence by the bidder; or
 - iii. the bidder obtaining financing;
- j) it includes an acknowledgment and representation that the bidder:
 - i. has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid;
 - ii. is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Receiver and its employees, officers, directors, agents, advisors and other representatives, regarding the proposed transaction, this Sale Process, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents;
 - iii. is making its bid on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Receiver or any of its employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed transaction documents;
 - iv. is bound by this Sale Process and the Sale Process Order; and
 - v. is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with this Sale Process or its bid;
- k) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the proposed transaction (including the anticipated timing necessary to obtain such approvals);

- l) it is accompanied by a cash deposit (the “**Deposit**”) by wire transfer of immediately available funds equal to 10% of the Consideration Value, which Deposit shall be retained by the Receiver in an interest bearing trust account in accordance with the terms hereof;
 - m) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
 - n) it is received by the Receiver by the Qualified Bid Deadline at the email addresses specified on **Schedule “B”** hereto.
10. The Qualified Bid Deadline may be extended by the Receiver, with the prior written consent of KingSett, or by further order of the Court.
11. The Receiver may, in consultation with KingSett, waive compliance with any one or more of the requirements specified in Section 9 above and deem a non-compliant bid to be a Qualified Bid, provided that the Receiver shall not waive compliance with the requirements specified in Subsections 9(a), (b), (c), (d), (e), (g), (j), (k), (l) or (n) without the prior written consent of KingSett, acting reasonably.
12. Notwithstanding the requirements specified in Section 9 above, the transaction contemplated by the Stalking Horse Purchase Agreement (the “**Stalking Horse Bid**”), is deemed to be a Qualified Bid.
13. If one or more Qualified Bids (other than the Stalking Horse Bid) have been received by the Receiver on or before the Qualified Bid Deadline, the Receiver will proceed with an auction process to determine the successful bid(s) (the “**Auction**”), which Auction shall be administered in accordance with **Schedule “C”** hereto. The successful bid(s) selected within the Auction shall constitute the “Successful Bid”. Forthwith upon determining to proceed with an Auction, the Receiver shall provide written notice to each party that submitted a Qualified Bid (including KingSett) in accordance with the terms herein, along with copies of all Qualified Bids and a statement by the Receiver specifying which Qualified Bid is the leading bid.
14. If, by the LOI Deadline, (a) no LOI has been received, or (b) no single LOI has been received with consideration at least as much as the applicable minimum Consideration Value, then the Sale Process shall be deemed to be terminated and the Stalking Horse Bid shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Stalking Horse Purchase Agreement.
15. If, by the Qualified Bid Deadline, no Qualified Bid (other than the Stalking Horse Bid) has been received by the Receiver, then the Stalking Horse Bid shall be deemed the Successful Bid and shall be consummated in accordance with and subject to the terms of the Stalking Horse Purchase Agreement.
16. Following selection of the Successful Bid, the Receiver, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the

Successful Bid in accordance with the milestones set out in Section 8. Once the necessary definitive agreement(s) with respect to the Successful Bid have been finalized, as determined by the Receiver, the Receiver shall apply to the Court for an order approving such Successful Bid and authorizing the Receiver to complete the transactions contemplated thereby, as applicable, and to: (a) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the transaction contemplated by such Successful Bid (an “**Approval and Vesting Order**”). If the Successful Bid is not consummated in accordance with its terms, the Receiver shall be authorized, but not required, to elect that the Back-Up Bid (if any) is the Successful Bid.

17. If a Successful Bid is selected and an Approval and Vesting Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a bid, other than the Stalking Horse Bid, that is not selected as a Successful Bid will be returned, with applicable interest thereon, to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to the Approval and Vesting Order or such earlier date as may be determined by the Receiver; provided, however, that the Deposit in respect of the Back-Up Bid shall not be returned to the applicable bidder until the closing of the Successful Bid.
18. The Receiver shall be permitted, in its discretion, to provide general updates and information in respect of this Sale Process to any stakeholder (each a “**Stakeholder**”) on a confidential basis, upon: (a) the irrevocable confirmation in writing from such Stakeholder that it will not submit any bid in this Sale Process; and (b) such Stakeholder executing a confidentiality agreement with the Receiver, in form and substance satisfactory to the Receiver.
19. Any amendments to this Sale Process may only be made by the Receiver, or by further order of the Court, provided that the Receiver shall not extend the Qualified Bid Deadline or amend the requirements specified in 9(a), (b), (c), (d), (e), (g), (j), (k), (l) or (n) without the prior written consent of KingSett, acting reasonably.

SCHEDULE "A": REAL PROPERTY SUBJECT TO SALES PROCESS**Vandyk – Uptowns Limited****PIN 14227-1291 (LT)**

PT LOT 12, CONCESSION 2, EHS DES PT 1, PL 43R33117; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1, 43R35581 AS IN PR2508870; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3253482; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3770466; SUBJECT TO AN EASEMENT AS IN PR3853334; CITY OF BRAMPTON

Vandyk – Heartlake Limited (f/k/a 2366885 Ontario Inc.)**PIN 14227-1266 (LT)**

PT LT 11 CON 2 EHS CHING DES PT 1 PL 43R-19750, SAVE AND EXCEPT PT 7 PL 43R31217; SUBJECT TO AN EASEMENT AS IN PR4122243; SUBJECT TO AN EASEMENT OVER PART 2 PLAN 43R42017 IN FAVOUR OF PART LOT 11 CON 3 EHS (CHING), PARTS 6, 7 PLAN 43R21967 SAVE & EXCEPT 43M1297, 43M1399, PARTS 1, 2 PLAN 43R24833 SAVE & EXCEPT 43M1680 AS IN PR4494175; CITY OF BRAMPTON

PIN 14227-1832 (LT)

PART OF LOT 11 CONCESSION 2, EAST HURONTARIO STREET, CHINGUACOUSY, BEING PARTS 5, 6, 7, 8, 9, 10 AND 11 PLAN 43R42253; SUBJECT TO AN EASEMENT AS IN PR4122243; SUBJECT TO AN EASEMENT OVER PARTS 6 AND 9, PLAN 43R42253 AS IN PR4494175; CITY OF BRAMPTON

PIN 14227-1831 (LT)

PART OF LOT 11 CONCESSION 2, EAST OF HURONTARIO STREET, CHINGUACOUSY, BEING PARTS 1, 2, 3 AND 4, 43R42253; SUBJECT TO AN EASEMENT AS IN PR4122243; SUBJECT TO AN EASEMENT OVER PARTS 2 AND 4, 43R42253 AS IN PR4494175; CITY OF BRAMPTON

Vandyk – Lakeview – DXE – West Limited**PIN 13482 - 0071 (LT)**

LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA; SUBJECT TO AN EASEMENT IN GROSS AS IN PR4448417; SUBJECT TO AN EASEMENT AS IN PR4493864

Vandyk – The Ravine Limited**PIN 13214-0871 (LT)**

LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0872 (LT)

LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0873 (LT)

LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0874 (LT)

LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043 AS IN PR3908805; CITY OF MISSISSAUGA

PIN 13214-0875 (LT)

LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0876 (LT)

LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0877 (LT)

LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0878 (LT)

LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0879 (LT)

LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0880 (LT)

LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0881 (LT)

LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0882 (LT)

LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0883 (LT)

LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0884 (LT)

LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0885 (LT)

LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0886 (LT)

LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0887 (LT)

LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0888 (LT)

LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0889 (LT)

LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0890 (LT)

LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0891 (LT)

LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0892 (LT)

LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0893 (LT)

LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0894 (LT)

LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0895 (LT)

LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0896 (LT)

LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0897 (LT)

LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0898 (LT)

LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0899 (LT)

LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0900 (LT)

LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0901 (LT)

LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0902 (LT)

LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0903 (LT)

LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0904 (LT)

LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0905 (LT)

LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0906 (LT)

LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0907 (LT)

LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0908 (LT)

LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0909 (LT)

LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0910 (LT)

LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0911 (LT)

LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA

SCHEDULE “B”: E-MAIL ADDRESSES FOR DELIVERY OF BIDS

To the Receiver:

ngoldstein@ksvadvisory.com; mtallat@ksvadvisory.com

With a copy to counsel for the Receiver:

mwasserman@osler.com; drosenblat@osler.com

SCHEDULE “C”: AUCTION PROCEDURES

1. **Auction.** If the Receiver receives at least one Qualified Bid (other than the Stalking Horse Bid), the Receiver will conduct and administer the Auction in accordance with the terms of the Sale Process. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Bid (collectively, the “**Qualified Parties**” and each a “**Qualified Party**”), shall be eligible to participate in the Auction. No later than 3:00 pm Eastern Time on the day prior to the Auction, each Qualified Party (other than KingSett) must inform the Receiver whether it intends to participate in the Auction. The Receiver will promptly thereafter inform each Qualified Party who has expressed its intent to participate in the Auction, in writing, of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Bid shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only the Receiver, the Qualified Parties, and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver (the “**Initial Bid**”), and any bid made at the Auction by a Qualified Party subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional cash increments of \$250,000;
- c. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each Overbid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- d. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- e. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- f. **Auction Cancellation/Postponement.** The Receiver reserves the right to cancel or postpone the Auction.
- g. **Additional Rules.** Except as otherwise set forth herein, the Receiver may establish additional rules for conducting the Auction, provided that such rules are: (a) disclosed to each participating Qualified Party; (b) designed, in the Receiver's business judgment, to result in the highest and otherwise best offer; and (c) not contrary to any material term set out herein, in the Sales Process or in the Sale Process Order.

4. **Selection.** Before the conclusion of the Auction, the Receiver, will: (a) review each Qualified Bid, considering the factors set out in Section 9 of the Sale Process and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by the Outside Date and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court's approval of the Qualified Bid; and (v) any other factors the Receiver may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one (1) business day of the Successful Bid being selected as such, unless extended by the Receiver, subject to the milestones set forth in Section 8 of the Sale Process.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**KINGSETT MORTGAGE
CORPORATION AND DORR
CAPITAL CORPORATION**

and

**VANDYK – UPTOWNS LIMITED, VANDYK – HEARTLAKE LIMITED, 2402871
ONTARIO INC., VANDYK – THE RAVINE LIMITED, VANDYK – LAKEVIEW-DXE-
WEST LIMITED AND VANDYK – LAKEVIEW-DXE-EAST LIMITED**

Applicant

Respondents

Court File No.: CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced in Toronto

**ORDER
(Sale Process Approval)**

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

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Tel: 416.862.5673

Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc. in its capacity as
Receiver



SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00709180-00CL **DATE:** January 15, 2026

REGISTRAR: Tharsica Sivananthan/ Hannah Kronick

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE
CORPORATION et al v. VANDYK – UPTOWNS LIMITED et al

BEFORE: JUSTICE FL MYERS

PARTICIPANT INFORMATION

For Plaintiff, Applicant / Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Aiden Nelms	Kingsett Mortgage Corporation and Dorr Capital Corporation	nelmsa@bennettjones.com
Daniel Pollack	Kingsett Mortgage Corporation	dpollack@kingsettcapital.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

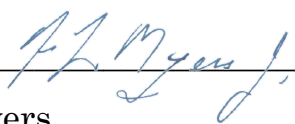
Name of Person Appearing	Name of Party	Contact Info
Marc Wasserman Dave Rosenblat Marleigh Dick	KSV Restructuring Inc.	mwasserman@osler.com drosenblat@osler.com mdick@osler.com
Adam Slavens	Tarion Warranty Corporation	aslavens@torys.com
Dan Fridmar	Lien Claimant – Myer Salit Limited	dan@fridmar.com
Kate Parker (observer)	Kohn Partnership Architects and Aquila Project Solutions	kparker@foglers.com
Thomas Sanderson	Counsel for City of Mississauga	tsanderson@millერთhompson.com

ENDORSEMENT OF JUSTICE FL MYERS:

1. The Receiver seeks approval of a stalking horse sales process, including the usual sealing order, and a priority claims process.
2. The stalking horse bidder is the Applicant. It is credit bidding. It needs to know the value of priority claims to value its bid. The two processes are therefore linked.
3. No one opposes the relief sought.
4. I am satisfied that this is a good case for a stalking horse process. I agree with the Receiver that it provides stability and fairness in a difficult process. There are very large values at play here. There are some moving parts to determine the total value of the bid(s). The Applicant is a natural bidder if only to end the costs of the receivership.
5. I am satisfied that the sales process proposed is fair and reasonable. In light of the history, it provides ample time for bidders to be found. I see no bid-dissuading terms that might skew an auction.
6. I am satisfied that the confidentiality of the Confidential Appendices is required to ensure the bidding process is fair and conducted with integrity in the public interest. The sealing order is narrowly tailored to just the confidential information

and it is time limited. There is no harm to the open courts principle by sealing the confidential information while the bidding plays out.

7. The proposed priority claims process is also fair and reasonable. Parties will have access to the court if they cannot resolve their claims. All will have input into the degree of formality to be implemented in any court determination process.
8. Finally, in my view, para. 4 of the draft Sale Process Order and paras 21 (b) through (d) of the draft priority claims process order are overbroad and redundant. I have removed them. If the Receiver cannot conduct either of the processes without those paragraphs, I will hear it further on evidence related to that issue.



FL Myers

TAB 9

Court File No. CV-25-00091460-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	TUESDAY THE 29 TH
MR. JUSTICE KRAWCHENKO	)	
	)	DAY OF JANUARY, 2026

B E T W E E N:



NATIONAL BANK OF CANADA

Applicant

- and -

R-CHAD INVESTMENT INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ORDER

(Approval of Sale Process)

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of R-Chad Investment Inc. (the "**Debtor**") for an order, among other things, (i) approving the sale process (the "**Sale Process**") substantially in the form attached at Schedule "A"; (ii) approving the Stalking Horse Agreement (defined below); and (iii) sealing confidential appendices until the completion of a sale of the property municipally known as 675-705 Remembrance Road, Brampton, ON L7A 5H2, as further described in Schedule "B" hereto (the "**Real Property**"), was heard this day by judicial videoconference via Zoom.

ON READING the first report of the Receiver dated November 25, 2025 (the "**First Report**") and the confidential appendices thereto (the "**Confidential Appendices**"), the supplemental report to the First Report dated January 22, 2026 (the "**Supplemental Report**"), and on hearing the submissions of counsel:

SERVICE

1. **THIS COURT ORDERS** that the timing and method of serving the Motion Record of the Receiver dated November 26, 2025 and the Supplemental Motion Record of the Receiver dated January 22, 2026, be and are hereby abridged and validated, and this motion is properly returnable today.

APPROVAL OF RECEIVER'S REPORT AND ACTIVITIES

2. **THIS COURT ORDERS** that the First Report and Supplemental Report, and the activities of the Receiver described therein, including its Interim statement of receipts and disbursements as of January 15, 2026 (the "**Updated SR&D**"), be and are hereby approved, provided, however, that only the Receiver in its personal capacity and with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

STALKING HORSE AGREEMENT

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered to enter into the asset purchase agreement made as of January 22, 2026 (the "**Stalking Horse Sale Agreement**") between the Receiver, as vendor, and Noreen Asghar, in trust for a corporation to be incorporated (the "**Stalking Horse Bidder**"), in the form attached as Appendix "B" to the Supplemental Report; provided that nothing in this Order approves the sale or vesting of the assets contemplated in the Stalking Horse Sale Agreement, and any approval and vesting of such assets shall be sought by further order of this Court following completion of the Sale Process.

SALE PROCESS

4. **THIS COURT ORDERS** that the Sale Process substantially in the form attached at Schedule "A" to this Order, and described in the Supplemental Report at paragraph 11, be and is hereby approved;

5. **THIS COURT ORDERS** that the auction procedures attached as Schedule "C", be and are hereby approved.

6. **THIS COURT ORDERS** that the Receiver and its advisors are hereby authorized and directed to carry out the Sale Process and take such steps and execute such documentation as may be necessary or incidental to the Sale Process.

7. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process (as determined by this court).

8. **THIS COURT ORDERS** that, in connection with the Sale Process, the Receiver shall have all benefits and protections granted to it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, the Order (Appointing Receiver) dated September 4, 2025 and any Order of this Court in the within proceeding.

INTERIM STATEMENTS OF RECEIPTS

9. **THIS COURT ORDERS** that the Updated SR&D, is hereby approved.

PROFESSIONAL FEES

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the fee affidavits in the First Report, and updated fee affidavits in the Supplemental Report, are hereby approved.

SEALING ORDER

11. **THIS COURT ORDERS THAT** the Confidential Appendices are hereby sealed until the earlier of: (i) the completion of a sale of the Real Property; or (ii) further order of this Court.

12. **THIS COURT ORDERS** that this Order, and all of its provisions, are effective as of the date hereof, without any need for entry or filing.

Issued and entered electronically by

Local Registrar
45 Main St East
Hamilton, ON
L8N 2B7

"on behalf of Justice Krawchenko"

SCHEDULE A

STALKING HORSE BIDDING PROCEDURES

Subject to Court availability, within ten (10) business days following an auction (the “**Auction**”), if applicable, the Receiver shall bring a motion (the “**Approval Motion**”) seeking the granting of an approval and vesting order (the “**AVO**”) by the Court authorizing the Receiver to proceed with authorizing and approving the Sale of the Property to the Qualified Bidder.

Assets to Be Sold en bloc

The Receiver is offering for Sale all of R-Chad’s right, title and interest in and to all of the Property en bloc and only a bid for all the Property, in whole and not in part, can be eligible to be a Qualified Bid (as defined herein). The Receiver will be responsible for conducting the Stalking Horse Bidding Procedures and Auction Procedures.

The Bidding Process

The Receiver shall have the right to adopt, modify and implement such further and other rules and procedures (including rules and procedures that may depart from those set forth herein) that, in its reasonable business judgment, will enhance and improve the goals of the Stalking Horse Bidding Procedure provided, however, any material modifications shall require a further Order of the Court.

Participation Requirements

For clarity, a “**Qualified Bidder**” is a prospective offeror who submits an offer in the same form as the Stalking Horse Bid submitted in the form of the template APS, with the only changes being the Purchase Price and Break Fee, and satisfies the Bid Requirements (as defined herein), as determined by the Receiver in its sole discretion. Any bid meeting these criteria that is received by the Receiver is a qualified bid (a “**Qualified Bid**”). A Qualified Bidder shall deliver written copies of its bid and the Bid Requirements to the Receiver not later than 5:00 p.m. (local Toronto time) sixty (60) days following Court approval of the stalking horse bid and a corresponding sales process (the “**Deadline**”).

Bid Requirements

All binding bids and accompanying materials submitted by a Qualified Bidder must provide for the following, in addition to the requirements set forth in the Sale Process, unless any such requirement is waived by the Receiver (collectively, the “**Bid Requirements**”):

- (i) transaction value equal to or greater than \$11,000,000.00, being the Stalking Horse Bid (\$11,000,000.00) plus the Break Fee of \$110,000.00 (the “**Base Purchase Price**”);
- (ii) delivery of the Qualified Bid to the Receiver on or before the Deadline;

- (iii) the identity of each person or entity (including its shareholders) that is sponsoring or participating in the Qualified Bid and the complete terms of such participation, evidence of corporate authority, and proof of such bidder's financial ability to perform the proposed transaction to the satisfaction of the Receiver, acting reasonably;
- (iv) a provision stating that the Qualified Bid is irrevocably open for acceptance until the selection of the successful bid;
- (v) the Deposit in the form of a wire transfer (to a bank account specified by the Receiver), in an amount equal to at least 10% of the total consideration contained in the Qualified Bid;
- (vi) no conditions based upon: (i) the outcome of any further due diligence, (ii) obtaining financing, or (iii) any other conditions to closing, except the usual limited conditions such as the issuance by the Court of an order approving the transaction and vesting title in and to the Qualified Bidder (as set out in the APS); and
- (vii) an executed copy of the APS and a blackline of the Qualified Bidder's proposed purchase agreement against the Stalking Horse Bid.

The Receiver reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best bid (the "**Lead Bid**"), for the purposes of the Auction (if applicable). Details of the Lead Bid will be provided by the Receiver to all Qualified Bidders no later than 5:00p.m. (local Toronto Time) two (2) business days before the date scheduled for the Auction.

A Qualified Bid may not be withdrawn, modified or amended without the written consent of the Receiver. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the successful bid being determined shall result in the forfeiture of such Qualified Bidder's deposit as liquidated damages and not as a penalty.

Highest versus Best Bid

In determining the Lead Bid or any Opening Bid, the highest and/or best bid during each round of bids, and the successful bid, the Receiver is not required to select the bid with the highest purchase price amount and may, exercising its reasonable business judgment, select another bidder on the basis that it is the best bid even though not the highest purchase price.

Acceptance of Qualified Bids

Any sale of the Property shall be subject to Court approval, and the Receiver shall be deemed to have accepted the Successful Bid only upon the granting of an AVO at the hearing of the Approval Motion.

Timeline of Sale Process

The Sale Process is structured to provide initial market exposure through a listing and pre-

marketing process, followed by the potential selection of a stalking horse bidder and a subsequent Court-supervised auction process designed to maximize value for stakeholders. The timeline of the Sale Process will be as described below:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Phase 1 – Listing and Pre-marketing		
Due diligence	➤ review all available documents concerning the Real Property, including environmental reports and planning and development reports	Pre-marketing launch
Finalize marketing materials	➤ Broker and the Receiver to: ○ prepare a teaser; ○ populate a virtual data room (“VDR”); ○ prepare a Confidentiality Agreement (“CA”); and prepare a Confidential Information Memorandum (“CIM”) ○ prepare form of Agreement of Purchase and Sale	Within one week of Court Approval of Listing Agreement and Sale Process
Prospect Identification	➤ develop a master prospect list; pre-marketing discussions with targeted purchasers.	Within one week of Court Approval of Listing Agreement and Sale Process
Phase 2 – Marketing		
Stage 1	➤ mass market introduction, including: ○ print offering summary and marketing materials; ○ list property for sale on MLS ○ telephone and email canvassing of leading prospects; and ○ meet with and interview prospective purchasers.	Commencing immediately following completion of Phase 1, and continuing for 30 days
Stage 2	➤ provide detailed information to qualified prospects which sign the CA, and access to the data room; and ➤ facilitate all diligence by interested parties.	Concurrent with Stage 1 and continuing until the bid deadline
Stage 3	➤ prospective purchasers to submit offers to purchase	Bid deadline 60 days following marketing launch
Phase 3 – Stalking Horse Selection and Court Supervised Auction Process		
Stage 1	➤ Following receipt and review of offers submitted through the marketing process, the Receiver will confirm the agreed stalking horse agreement of purchase and sale, subject to Court approval. Upon approval, the stalking horse bid will form the basis of a Court-supervised auction process	Within approximately 14 days following the bid deadline
Stage 2	➤ upon Court approval of the stalking horse transaction and bid protections, conduct a Court-supervised auction process in accordance with the Sale Process Order, with the stalking horse bid serving as the minimum bid	As soon as practicable following Court approval of the stalking horse transaction
Stage 3	➤ Court approval of the successful transaction resulting from the auction process and complete closing as soon as practicable thereafter.	As soon as practicable following completion of the auction

SCHEDULE "B"

BLOCK 133, PLAN 43M1969; TOGETHER WITH AN EASEMENT OVER PART 8, 43R-37926 AS IN PR3559232; SUBJECT TO AN EASEMENT OVER PART 7, 43R-37926 IN FAVOUR OF BLOCK 132, PLAN 43M1969 AS IN PR3559233; CITY OF BRAMPTON

PIN 1451-2999 LT

SCHEDULE C

AUCTION PROCEDURES

1. If the Receiver determines to conduct an Auction pursuant to the Stalking Horse Bidding Procedures, the Receiver will notify the Qualified Bidders that the Auction will be held either virtually or at the offices of Lerner LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise.
2. The Auction shall be conducted in accordance with the following procedures:
 - a) **Participation At The Auction**. Only a Qualified Bidder is eligible to participate in the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, MNP Ltd., and their respective counsel and other advisors shall be permitted to attend the Auction.
 - b) **Bidding at the Auction**. Bidding at the Auction shall be conducted in rounds. In each round, bids will increase in \$100,000 increments. Any Qualified Bidder who bids in a round shall be entitled to participate in the next round of bidding.
 - c) **Receiver Shall Conduct The Auction**. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the “**Opening Bid**” to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the Receiver’s assessment of the certainty of the Qualified Bidder to close the proposed transaction; and (iii) the likelihood, extent and impact of any potential delays in closing (collectively, the “**Bid Assessment Criteria**”).
 - d) **Terms of Overbids**. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
 - i. *Minimum Overbid Increment*: Any Overbid shall be made in \$100,000 increments (the “**Minimum Overbid Increment**”).
 - ii. *The Bid Requirements same as for Qualified Bids*: Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.

- iii. *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - iv. *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
 - v. *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.
- e) **Additional Procedures.** The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bidding Procedures (including these Auction Procedures).
 - f) **Closing the Auction.** The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the Stalking Horse Bidding Procedures.
 - g) **Finalizing Documentation.** Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

NATIONAL BANK OF CANADA
Applicant

BOA OF THE RECEIVER, P. 150
and R-CHAD INVESTMENT INC.
Respondent

Court File No. CV-25-00091460-0000

D343

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

ORDER

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Lawyers for the Receiver

Superior Court of Justice
HAMILTON

Court File Number/Numéro de dossier du greffe
CV-25-00091460-0000

Civil Endorsement Sheet/
Page d'inscription

DATE: 29/01/2026

Plaintiff(s)/Applicant(s): NATIONAL BANK OF CANADA

Counsel: no one appearing

Defendant(s)/Respondent(s): R-CHAD INVESTMENT INC.

Counsel: D MAGISANO and C.M NG– for Receiver

J FREEMAN - for Noreen Asghar (Director/Shareholder of R-Chad)

R GOSBEE - for Li Chen (Director/Shareholder of R -Chad)

Background

1. On September 4, 2025 Justice Latimer appointed MNP as Receiver, without security, of all of the assets, undertakings and properties of the Defendant/Debtor.
2. The Debtor is the registered owner of real property located at 675-705 Remembrance Road, Brampton, ON where it operates a gas station, car wash, and convenience store on and leases space in the site's two-storey retail and office building to three commercial tenants.
3. The National Bank of Canada holds a mortgage and assignment of rents registered on title to the said Real Property and a security interest in all the Debtor's personal property, assets and undertaking as registered under the Personal Property Security Registration Database.

The Motion

4. The motion before the court seeks an Order
 - a. authorizing and approving the first report of the Receiver dated November 25, 2025, the Supplemental Report to the First Report dated January 22, 2026, and the activities of the Receiver contained therein;
 - b. authorizing and approving the asset purchase agreement dated January 22, 2026 between R-Chad, by its Receiver, and Noreen Asghar, a shareholder of R-Chad as the "Stalking Horse Bidder" for the purpose of establishing a stalking horse bid in connection with a court-supervised sale process;
 - c. authorizing and approving the Receiver's proposed court-supervised sale process and bidding procedures including the use of the Stalking Horse Bid as a stalking horse transaction, as described in their Supplemental Report;

- d. sealing the Confidential Appendices of the First Report until: (i) the completion of a sale of the Real Property or (ii) a further Order of this Court;
- e. approving the Receiver's interim statement of receipts and disbursements for the period from September 4, 2025 to January 15, 2026; and
- f. approving the updated fees and disbursements of the Receiver and its counsel up to January 15, 2026 as set out in the updated fee affidavits.

The Proposed Sale Process

- 5. In early December 2025, Noreen Asghar approached the Receiver advising of her interest in acting as the Stalking Horse Bidder in connection with a court-supervised sale of the Real Property. The Receiver thereafter engaged in discussions with Asghar regarding the terms of a potential stalking horse transaction which resulted in the proposal before the court.
- 6. Noreen Asghar and Li Chen are shareholders in R-Chad. They are currently involved in litigation against each other.
- 7. Mr. Chen swore an affidavit on January 27, 2026 but did not upload it to case lines until today, the day of the hearing. I permitted Mr. Gosbee to reference his late filed materials in support of his arguments in opposition to this motion.
- 8. To summarise, Mr. Chen makes no allegations of improper conduct, negligence or wrongdoing on account of the Receiver, nor is he opposed a stalking horse transaction, he is opposed to Noreen Asghar as the bidder.

The Law

- 9. This Court has the jurisdiction to approve the **sale process** pursuant to section 243(1)(c) of the Bankruptcy and Insolvency Act.
- 10. The decision to approve a particular form of **sale process** is distinct from the approval of a proposed **sale transaction**, wherein the reasonableness and adequacy of any sale process must be assessed with a view to the considerations for the approval of a proposed sale. The Court of Appeal summarized these factors in Royal Bank v Soundair Corp which are:
 - (a) whether the receiver has made a sufficient effort to get the best price and not acted improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which offers are obtained; and
 - (d) whether there is unfairness in the working out of the process.
- 11. In deciding whether to approve a sale **process** the Court must keep the Soundair factors in mind while also assessing: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

12. It must also be noted that the Courts generally defer to the judgment and expertise of the Receiver in making its decisions.

Decision

Reports

13. There was no opposition to the approval of the Receiver's reports.
14. I am satisfied with the material filed and find that it is appropriate that I authorize and approve the first report of the Receiver dated November 25, 2025, the Supplemental Report to the First Report dated January 22, 2026, and the activities of the Receiver contained therein.

Sale Process

15. In this case, on the evidence before me I am satisfied that the Receiver has put forward a sale process with a view of maximizing value for creditors in a fair, efficiently and transparent manner, specifically the stalking horse process involving Noreen Asghar as the bidder.
16. Mr. Chen's feelings about Noreen Asghar are not relevant in this motion or to the proposed plan, recalling, that any agreement for sale (whether to Ms. Asghar, Mr. Chen or any other third party) will necessarily return to this court for approval of that sale and if there were *real* issues or *real* impediments that might impact on that sale, they would be raised at that time. The Receiver must be allowed to move forward with this sale process which is structured to provide maximum recovery for the benefit of the creditors.

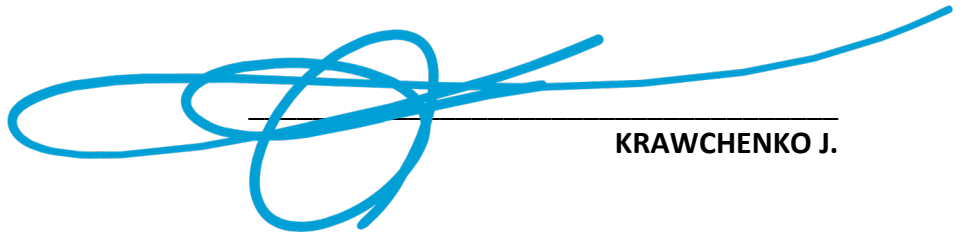
Sealing Order

17. The moving party also requests a sealing order.
18. The Supreme Court of Canada provided guidance on this issue in the *Sherman Estate* which I have applied in my decision.
19. Considering that the Confidential Appendices filed that contain commercially sensitive information, which, if made public, could negatively impact a future sale of the Real Property by the Receiver, the benefits of the Sealing Order in this case, outweigh the negative consequences related to restricting public access to the court record, which will be for a short duration as the Sealing Order would only be in effect until the Receiver is discharged or by further order of this Court. Further, no party would be prejudiced by the proposed Sealing Order.
20. Accordingly, the Receiver's request that the Confidential Appendices be sealed until: (i) the completion of the sale of the Real Property; or (ii) a further Order of this Court, is granted.

Fees Etc.

21. Concluding now with the request for approval of the activities and fees of the Receiver and Counsel, I find that they were necessary, undertaken in good faith and are reasonable.

22. For the foregoing reasons, Order to go as per draft order submitted at 27 of case center.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, is written over a thin black horizontal line.

KRAWCHENKO J.

TAB 10



No. S230488
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

NYDIG ABL LLC

PETITIONER

And:

IE CA 3 HOLDINGS LTD. AND IE CA 4 HOLDINGS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE
HONOURABLE JUSTICE
MILMAN

)
)
)

June 13, 2023

THE APPLICATION of PricewaterhouseCoopers Inc. as Receiver and Manager (the “**Receiver**”) of IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd. (together, the “**Debtors**”) coming on for hearing at Vancouver, British Columbia, on the 13th day of June, 2023; AND ON HEARING from Mary Buttery, K.C. counsel for the Receiver and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the Receiver’s Third Report to the Court, dated June 7, 2023; AND UPON REVIEWING the Order made after Petition Appointment of Receiver of the Honourable Mr. Justice Milman, granted February 3, 2023 (the “**Receivership Order**”); THIS COURT ORDERS THAT:

SERVICE

1. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the Service List established in this proceeding is hereby dispensed with.

SSP PROCEDURES, STALKING HORSE BID AND BREAK FEE

2. The sale solicitation process attached as **Schedule “B”** hereto, subject to any amendments thereto that may be made in accordance therewith (the “SSP”) be and is hereby approved.
3. The Receiver and its advisors (including Foundry Digital LLC as sales agent for and on behalf of the Receiver) is hereby authorized and directed to implement the SSP and do all things as are reasonably necessary to conduct and give full effect to the SSP and carry out its obligations thereunder.
4. The Receiver is hereby authorized and directed to execute and enter into the definitive “stalking horse” asset purchase agreement (the “**Stalking Horse APA**” and the transactions provided therein, the “**Stalking Horse Bid**”) with NYDIG ABL LLC, or its designated nominee, as purchaser (the “**Stalking Horse Credit Bidder**”), substantially on the terms set out in the stalking horse asset purchase agreement attached as **Schedule “C”** hereto, subject to such amendments, additions and/or deletions permitted by the Stalking Horse APA and as may be negotiated between the Receiver and the Stalking Horse Credit Bidder.
5. The Stalking Horse Bid submitted by the Stalking Horse Credit Bidder is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the SSP, provided that nothing herein approves the sale to and the vesting of any assets or property in the Stalking Horse Credit Bidder pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets and property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Credit Bidder is the Successful Bidder (as defined in the SSP) pursuant to the SSP.
6. The Break Fee, as defined in the Stalking Horse APA is hereby approved and the Receiver is authorized and directed to pay the Break Fee in the manner and circumstances described therein.

FOUNDRY AGREEMENT

7. The Receiver is hereby authorized and empowered to enter into the engagement letter agreement with Foundry Digital LLC.

- 3 -

AUTHORITY TO ASSIGN THE DEBTORS INTO BANKRUPTCY

8. The Receiver is hereby authorized, if the Receiver deems advisable, to assign the Debtors, or either one of them, into bankruptcy pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
9. The Receiver shall not be disqualified from acting as Trustee in Bankruptcy by reason only of its role as Receiver.

BY THE COURT

M. L. Mac, J.

REGISTRAR

CHECKED
ICV

SCHEDULE “A”**List of Counsel**

NAME	APPEARING FOR
Mary Buttery, K.C. Emily Paplawski	Counsel for the Receiver, PricewaterhouseCoopers Inc.
Candace Formosa Kieran Siddall	Counsel for the Respondents, IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd.
Chris Burr Claire Hildebrand	Counsel for the Petitioner, NYDIG ABL LLC

SCHEDULE “B”

Sales Solicitation Process

SALE PROCESS

Introduction

By Order of the Honourable Mr. Justice Milman of the Supreme Court of British Columbia (the “**Court**”) dated February 3, 2023 (the “**Receivership Order**”), PricewaterhouseCoopers Inc. was appointed receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended, without security, of all the assets, undertakings and property (the “**Property**”) of IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd. (the “**Debtors**”). The Property of the Debtors includes approximately 37,500 Antminer S19, Antminer S19 Pro, and Antminer S19j Pro bitcoin miners (the “**Miners**”).

On June 13, 2023, the Court granted an Order (the “**Sale Process Approval Order**”) approving the sale solicitation procedures set forth herein (the “**SSP Procedures**”) together with an asset purchase agreement between NYDIG ABL LLC (the “**Stalking Horse Credit Bidder**”) and the Receiver, dated June 7, 2023 (the “**Stalking Horse APA**”), defining the terms of a bid by the Stalking Horse Credit Bidder to purchase all of the Miners and take an assignment of certain Assigned Contracts (as defined in the Stalking Horse APA), if any (the “**Purchased Assets**”), for the Purchase Price (as defined below), subject to certain conditions, adjustments, and other terms defined therein. The Sale Process Approval Order and these SSP Procedures shall exclusively govern the process (the “**Sale Process**”) for soliciting and selecting bids for the sale of all or substantially all of the Property of the Debtors.

All dollar amounts expressed herein, unless otherwise noted, are in United States currency. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Stalking Horse APA.

Stalking Horse APA

The Stalking Horse APA has been approved as the stalking horse bid under paragraph 5 of the Sale Process Approval Order.

SSP Procedures

These SSP Procedures describe, among other things, the Property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Miners, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids, and the approval thereof by the Court.

The Receiver shall administer the SSP Procedure with the assistance of Foundry Digital LLC (the “**Sales Agent**”). In the event that there is disagreement as to the interpretation or application of this SSP Procedure, the Court will have jurisdiction to hear and resolve such dispute.

The Receiver will use reasonable efforts to complete the SSP Procedures in accordance with the timelines set out herein. The Receiver shall be permitted to make such adjustments to the timeline that it determines are reasonably necessary.

Opportunity

The SSP Procedures are intended to solicit interest in, and opportunities for, a sale of all, or substantially all, of the Miners (each, a “**Sale**”). Approximately 1,500 of the Miners are located at the supplier’s warehouse in Malaysia. The remaining approximately 36,000 Miners are located in storage in Mackenzie and Cranbrook, British Columbia.

The Receiver has entered into the Stalking Horse APA which constitutes a Qualified Bid for all purposes and at all times under the SSP Procedures. The “Purchase Price” for the Purchased Assets under the Stalking Horse APA, exclusive of all applicable Transfer Taxes, is comprised of the aggregate of the following: (i) the amount of Priority Claims determined by the Receiver as of the Closing Date to be validly due and owing by either of the Debtors, if any (the “**Approved Priority Claim Amount**”); (ii) a credit bid of US\$21 million, less the Approved Priority Claim Amount, if any (the “**Credit Bid Amount**”); and (iii) all liabilities and obligations listed on Schedule “G” to the Stalking Horse APA (collectively, the “**Assumed Liabilities**” and together with the Approved Priority Claim Amount and the Credit Bid Amount, the “**Purchase Price**”).

Notwithstanding the Stalking Horse APA, all interested parties are encouraged to submit Qualified Bids based on any configuration of Miners they wish. As discussed further below, a “Qualified Bid” under these SSP Procedures may be comprised either of an *en bloc* bid for all or substantially all of the Miners, or a number of non-overlapping separate bids which collectively relate to all or substantially all of the Miners and: (a) which meet the requirements for a “Qualified Bid” under these SSP Procedures; and (b) in respect of which, and in discussions with the Receiver and the Sales Agent, the bidders have agreed to syndicate and appoint a representative for purposes of participating in the Sale Process including, if applicable, the Auction (as defined below).

Sale Process Timeline

The Receiver currently anticipates that the Sale Process will commence on or about June 21, 2023:

Milestone	Date	Day
Send Teaser Letter and Advertise SSP	Within 2 calendar days of Sale Process commencement	Friday, June 23, 2023
Due Diligence Period (NDAs signed, access to VDR granted and site visits organized)	2 calendar days after Sale Process commencement to 32 calendar days thereafter	Up to and including Tuesday, July 25, 2023
Final Bid Deadline	5 calendar days after the Due Diligence Period ends	Monday, July 31, 2023
Bid Assessment	Within 5 Business Days of Final Bid Deadline	Tuesday, August 8, 2023

Milestone	Date	Day
Notification of Auction Date (if applicable)	Within 5 Business Days of completion of Bid Assessment	Tuesday, August 15, 2023
Auction Date (if applicable)	2 Business Days after Notification of Auction Date	Thursday, August 17, 2023
Court Approval to implement Stalking Horse APA (if applicable)	Within 10 calendar days of the Auction Date (subject to Court availability)	Monday, August 28, 2023
Period of time to finalize definitive documents for Successful Bid (if applicable)	Within 10 calendar days of the Auction Date	Monday, August 28, 2023
Court Approval of Successful Bid (if applicable)	Within 22 calendar days of the Auction Date (subject to Court availability)	Friday, September 8, 2023

“As Is, Where Is”

The sale of the Miners will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its agents, except to the extent set forth in the relevant final sale agreement with a Successful Bidder.

Free of Any and All Claims and Interests

In the event of a Sale, all of the right, title and interest of the Debtors in and to all Miners sold or transferred will, at the time of such sale or transfer, be sold or transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively the "**Claims and Interests**") pursuant to one or more approval and vesting orders made by the Court. Contemporaneously with such approval and vesting orders being made, all such Claims and Interests shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

Solicitation of Interest

As soon as reasonably practicable and, in any event, by no later than two (2) calendar days after commencement of the Sale Process, the Receiver will:

- a) cause a notice of the Sale Process contemplated by these SSP Procedures, and such other relevant information which the Receiver considers appropriate, to be published in applicable industry publications, websites and/or forums; and
- b) in consultation with the Sales Agent, prepare a summary describing the Opportunity, outlining the SSP Procedures and inviting recipients to express their interest in making a Qualified Bid (a “**Teaser Letter**”) for distribution to potential bidders.

Participation Requirements and Due Diligence

In order to participate in the Sale Process, an interested party must deliver to the Receiver at the address specified herein (including by email), and prior to the distribution of any confidential information by the Receiver and/or the Sales Agent to such interested party (including access to the confidential virtual data room (the “**VDR**”)), an executed non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by a Successful Bid (as defined below).

A potential bidder that has executed an NDA, as described above, and who the Receiver, in its sole discretion, determines has a reasonable prospect of completing a Sale contemplated herein, will be deemed a “**Qualified Bidder**” and will be promptly notified of such classification by the Receiver.

The Receiver shall provide any person deemed to be a Qualified Bidder with access to the VDR and the Receiver shall provide to Qualified Bidders further access to such reasonably required due diligence materials and information relating to the Miners as the Receiver deems appropriate. The Receiver makes no representation or warranty as to the information to be provided through the due diligence process or otherwise, regardless of whether such information is provided in written, oral or any other form, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder executed and delivered by the Receiver and approved by the Court.

Upon the reasonable request of a Qualified Bidder, on-site inspections of the Miners may be arranged by the Receiver in its sole discretion. As the Miners are currently stored in remote locations in British Columbia that are not readily accessible by the Receiver, only one site visit per storage location will be organized for each Qualified Bidder. No site visits to the supplier’s warehouse in Malaysia will be organized or permitted.

Submission of Qualified Bids

A Qualified Bidder that desires to make a bid for some or all of the Miners must deliver either:

- a) a final, written, binding offer (each, a “**Final Bid**”) in the form of a fully executed purchase and sale agreement substantially in the form of the template purchase and sale agreement located in the VDR (the “**Template APA**”); or
- b) a signed letter confirming that the Qualified Bidder wishes to assume and perform the obligations of the Stalking Horse Credit Bidder under the Stalking Horse APA, subject to the necessary adjustment to the Purchase Price to provide cash consideration and to include the Minimum Incremental Overbid (as defined below) and the Break Fee (as

defined below), and detailing any adjustments, revisions or other terms that the Qualified Bidder proposes be included in the Stalking Horse APA (a “**Confirmation of Assumption**”),

in each case to the Receiver at the address specified herein (including by email transmission) so as to be received by the Receiver not later than 4:00 p.m. PDT on July 31, 2023, or such later date as may be agreed by the Receiver and communicated in writing to all Qualified Bidders (the “**Final Bid Deadline**”).

Requirements for Qualified Bid

A Final Bid will only be considered a Qualified Bid if it is submitted by a Qualified Bidder and complies with the following conditions (each, a “**Qualified Bid**”):

- a) it has been received by the Final Bid Deadline;
- b) it contains
 - a. a duly executed purchase and sale agreement substantially in the form of the Template APA and a blackline of the executed purchase and sale agreement to the Template APA; or
 - b. a Confirmation of Assumption compliant with the requirements above;
- c) it includes a letter stating that the Final Bid is irrevocable until there is a Successful Bid (as defined below), provided that if such Qualified Bidder is selected as the Successful Bidder, its Final Bid shall remain an irrevocable offer until the earlier of (i) the completion of the sale to the Successful Bidder and (ii) the Outside Date;
- d) it provides written evidence, satisfactory to the Receiver, of (a) a firm, irrevocable financial commitment for all required funding or financing or (b) evidence of the Qualified Bidder’s financial wherewithal to close the bid using unencumbered funds on hand;
- e) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- f) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer to a bank account specified by the Receiver, or such other form of payment acceptable to the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 20% of the total consideration in the Qualified Bid to be held and dealt with in accordance with these SSP Procedures;
- g) it is not conditional upon:
 - a. the outcome of unperformed due diligence by the Qualified Bidder, and/or
 - b. obtaining financing; and

- h) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Qualified Bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver, or any of its advisors, except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Qualified Bid; and (iv) has had the benefit of independent legal advice in connection with its Qualified;
- i) it contains evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body), if applicable: and
- j) if:
 - a. it is an *en bloc* bid, the aggregate consideration, as calculated and determined by the Receiver in its sole discretion, to be paid in cash by the Qualified Bidder under the Qualified Bid exceeds the aggregate of the Purchase Price under the Stalking Horse APA, plus the Break Fee and plus US\$1 million (the “**Minimum Incremental Overbid**”); or
 - b. it is for a select portion of the Miners comprising less than all or substantially all of the Miners (each, a “**Partial Bid**”) then, upon receipt of such bid, the Receiver may, in consultation and with the assistance of the Sales Agent, engage with applicable Qualified Bidders that submitted a Partial Bid to confirm whether, in aggregate, all applicable Partial Bids collectively: (i) relate to all or substantially all of the Miners; and (ii) provide cash consideration in excess of the aggregate of the Purchase Price under the Stalking Horse APA, plus the Break Fee and the Minimum Incremental Overbid. In the event the Receiver identifies two or more Partial Bids which meet the foregoing requirements, the Receiver will seek the agreement of each applicable Qualified Bidder to syndicate its respective bid with the other applicable Partial Bids (the “**Syndicated Bid**”) and appoint a representative (each, a “**Syndicated Bid Representative**”) for purposes of advancing the Syndicated Bid through the remainder of the Sale Process including, if applicable, the Auction.

Both *en bloc* bids and Syndicated Bids which comply with the foregoing conditions shall be considered to be “Qualified Bids”.

The Stalking Horse Credit Bidder shall be deemed to be a Qualified Bidder, and the Stalking Horse APA shall be deemed to be a Qualified Bid, for all purposes of these SSP Procedures, including for purposes of the Auction (if applicable). No deposit is required in connection with the Stalking Horse APA.

The Receiver may, in its reasonable discretion, waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such non-compliant bid to be a Qualified Bid in accordance with these SSP Procedures.

Assessment of Qualified Bids

The Receiver will assess the Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable but no later than five (5) Business Days after the Final Bid Deadline.

If the Receiver determines that (a) no Qualified Bids other than the Stalking Horse APA were received, or (b) at least one additional Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bids will be consummated, the Receiver shall (i) forthwith terminate these SSP Procedures, (ii) notify each Qualified Bidder (if any) that these SSP Procedures have been terminated, (iii) notify the Stalking Horse Credit Bidder that it is the Successful Bidder, and (iv) as soon as reasonable practicable after such termination, file an application with the Court seeking approval, after notice and hearing, to implement the Stalking Horse APA.

If the Receiver determines in its reasonable discretion that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, the Receiver may, in its sole discretion, advise all Qualified Bidders/Syndicated Bid Representative, as applicable, that an auction (the “**Auction**”) will be held and that such Qualified Bidders/Syndicated Bid Representative, as applicable, are entitled to participate in the Auction.

Auction

If an Auction is to be held, the Receiver will conduct the Auction commencing at 10:00 a.m. PDT on August 17, 2023 (the “**Auction Date**”) at the offices of the Receiver's legal counsel, Osler Hoskin & Harcourt LLP, Guinness Tower, 1055 W Hastings St #1700, Vancouver, BC, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, subject to such adjournments as the Receiver may consider appropriate.

The Auction shall run in accordance with the following procedures:

- a) prior to 4:00 p.m. PDT on August 16, 2023, each Qualified Bidder or Syndicated Bid Representative, as applicable, that has made a Qualified Bid and the Stalking Horse Bidder, must inform the Receiver whether it intends to participate in the Auction (the parties who so inform the Receiver that they intend to participate are hereinafter referred to as the “**Auction Bidders**”);
- b) the identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder participating in the Auction;
- c) only representatives of the Auction Bidders, the Receiver, the Sales Agent and such other persons as permitted by the Receiver (and the advisors to each of the foregoing entities)

are entitled to attend the Auction in person (and the Receiver shall have the discretion to allow such persons to attend by video- or tele-conference);

- d) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances, for conducting the Auction, including with respect to the ability of multiple Auction Bidders to combine to present a single bid, provided that such rules are (i) not inconsistent with these SSP Procedures, general practice in insolvency proceedings, or the Receivership Order and (ii) disclosed to each Auction Bidder at the Auction;
- e) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- f) the Receiver shall arrange to have a court reporter attend at the Auction;
- g) each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with any other person, without the express written consent of the Receiver, regarding the Sale Process, that has not been disclosed to all other Auction Bidders;
- h) prior to the Auction, the Receiver will provide unredacted copies of the Qualified Bid(s) which the Receiver believes is/are (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to the Stalking Horse Credit Bidder and to all Qualified Bidders or Syndicated Bid Representatives, as applicable, that have made a Qualified Bid;
- i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver determines is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or otherwise better offer than the then current highest and best bid (the "**Leading Bid**"), in each case by at least US\$500,000, or such amount as may be determined by the Receiver prior to, and announced at, the Auction;
- j) the Stalking Horse Credit Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, which Subsequent Bids may be comprised of increased credit bids up to the full amount of the secured indebtedness owing by the applicable Debtor to the Stalking Horse Credit Bidder, provided, however, that such Subsequent Bids are made in accordance with these SSP Procedures;
- k) to the extent not previously provided (which shall be determined by the Receiver), an Auction Bidder submitting a Subsequent Bid must submit, at the Receiver's discretion, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid;

- l) only the Auction Bidders will be entitled to make a Subsequent Bid at the Auction; provided, however, that in the event that any Qualified Bidder or Syndicated Bid Representative, as applicable, elects not to attend and/or participate in the Auction, such Qualified Bidder's Qualified Bid or Syndicated Bid Representative's Syndicated Bid, shall nevertheless remain fully enforceable against such Qualified Bidder or Syndicated Bid Representative, as applicable, if it is selected as the Successful Bid (as defined below);
- m) all Auction Bidders shall have the right to, at any time, request that the Receiver announce the then-current Leading Bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any and all questions such Auction Bidder may have regarding the Leading Bid;
- n) the Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require that that Auction Bidder has sufficient internal resources to consummate the proposed transaction at the prevailing overbid amount;
- o) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed; and
- p) no bids (from Qualified Bidders, Syndicated Bid Representatives, or otherwise) shall be considered after the conclusion of the Auction.

At the end of the Auction, the Receiver shall select the successful bid (the “**Successful Bid**”, with such bidder being the “**Successful Bidder**”). Upon selection of a Successful Bidder, the Successful Bidder shall deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Application (as defined below).

If an Auction is conducted, the Auction Bidder and/or Qualified Bidder/Syndicated Bid Representative (as applicable) with the next highest or otherwise best Qualified Bid at the Auction or, if such Qualified Bidder/Syndicated Bid Representative (as applicable) did not participate in the Auction, submitted in this Sale Process, as determined by the Receiver, will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the “**Backup Bid**”) open until the earlier of (a) two business days after the date of closing of the Successful Bid; and (b) September 30, 2023 (the “**Outside Date**”).

The Receiver shall have selected the final Successful Bid(s) and the Backup Bid(s) as soon as reasonably practicable after the Auction Date and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than August 28, 2023, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than September 8, 2023, or such longer period

as shall be agreed to by the Receiver in writing. In any event, the Successful Bid must be closed by no later than the Outside Date, or such other date as may be agreed to by the Receiver in writing.

Approval of Successful Bid

The Receiver shall apply to the Court (the “**Approval Application**”) for an order approving the Successful Bid and the Backup Bid (as applicable) and vesting title to any purchased Miners in the name of the Successful Bidder or the Backup Bidder (as applicable) (the “**Approval Order**”). The Approval Application will be held on a date to be scheduled by the Receiver and confirmed by the Court. The Receiver shall use best efforts to schedule the Approval Application on or before September 8, 2023 subject to Court availability. The Approval Application may be adjourned or rescheduled by the Receiver on notice to the Service List prior to the Approval Application. The Receiver shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Receiver for the Approval Application, which material shall be acceptable to the Successful Bidder, acting reasonably.

If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then such Successful Bidder will forfeit its Deposit and the Backup Bid, if there is one, will be deemed to be the Successful Bid hereunder and the Receiver shall effectuate a transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

Deposits

All Deposits shall be retained by the Receiver in a bank account specified by the Receiver. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposit paid by the Backup Bidder shall be retained by the Receiver until two business days after the date of closing of the Successful Bid or the Outside Date, whichever is later, or, if the Backup Bid becomes the Successful Bid, shall be released by the Receiver and applied to the purchase price to be paid upon closing of the Backup Bid.

All Deposits of all Qualified Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders within five (5) business days of the date upon which the Successful Bid and any Backup Bid is approved by the Court. If the Auction does not take place or these SSP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the Qualified Bidders within five (5) business days of the date upon which it is determined that the Auction will not take place or these SSP Procedures are terminated, as applicable.

If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close the applicable transaction, it shall forfeit its Deposit to the Receiver; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Receiver has against such breaching entity.

Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any other statute or are otherwise required at law in order to implement a Successful Bid or Backup Bid, as the case may be.

Notice

The addresses used for delivering documents to the Receiver as required by the terms and conditions of these SSP Procedures are set out below. A bid and all associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier.

To the Receiver:

PricewaterhouseCoopers Inc.
Suite 1400, 250 Howe St.
Vancouver, BC V6C 3S7

Attention: Michelle Grant / Morag Cooper
Tel. No.: 604.806.7184 / 236.308.4439
Facsimile: 604.806.7806
Email: michelle.grant@pwc.com / morag.c.cooper@pwc.com

with a copy to:

Osler, Hoskin & Harcourt LLP
The Guinness Tower
1055 W Hastings St #1700
Vancouver, BC V6E 2E9

Attention: Mary Buttery, K.C. / Emily Paplawski
Tel. No.: 604.692.2752 / 403.260.7071
Facsimile: 778.785.2745
Email: muttery@osler.com / epaplawski@osler.com

Reservation of Rights

The Receiver: (a) may reject, at any time any bid (other than the Stalking Horse Credit Bid) that is (i) inadequate or insufficient, or (ii) not in conformity with the requirements of these SSP Procedures or any orders of the Court applicable to the Debtors; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the SSP Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these SSP Procedures to the extent that the Receiver determines, in its reasonable business judgment, that doing so would benefit the Debtors' estates and their stakeholders.

The Receiver may, in its reasonable discretion, extend the Final Bid Deadline, the Outside Date, the date for selection of the final Successful Bid(s) and the Backup Bid(s), the date for finalization

and execution of definitive documentation in respect of the Successful Bid, and/or the date for the hearing of the Approval Application.

Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant Auction Bidders, as the Receiver may determine to be in the best interests of the Debtors' estate and their stakeholders that are not inconsistent with any of the procedures in these SSP Procedures.

These SSP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any potential bidder, Qualified Bidder, Syndicated Bid Representative, Auction Bidder, Successful Bidder or Backup Bidder, other than as specifically set forth in definitive documentation that may be executed by the Receiver.

No Amendment

There shall be no amendments to these SSP Procedures without the prior written consent of the Receiver and the Stalking Horse Credit Bidder, or further order of the Court obtained on reasonable notice to the Receiver.

Further Orders

At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

SCHEDULE “C”

Stalking Horse APA

**PRICEWATERHOUSECOOPERS INC., solely in its capacity as court-appointed receiver
and manager of certain IE CA 3 Holdings Ltd. & IE CA 4 Holdings Ltd.**

- and -

NYDIG ABL LLC, or its designee(s)

STALKING HORSE ASSET PURCHASE AGREEMENT

June 7, 2023

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION	2
1.1 Definitions	2
1.2 Certain Rules of Interpretation.....	6
1.3 Entire Agreement	7
1.4 Schedules	7
ARTICLE 2 PURCHASE AND SALE	8
2.1 Purchase and Sale of Purchased Assets	8
2.2 Excluded Assets	8
2.3 Assumed Liabilities	8
2.4 Assignment and Assumption of Contracts	9
2.5 Purchase Price	10
2.6 Satisfaction of Purchase Price.....	10
2.7 Statement of Approved Priority Claims	10
2.8 <i>En Bloc</i> Bid	10
2.9 Purchase Price Allocation	11
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES	11
3.1 Representations and Warranties of the Receiver	11
3.2 Representations and Warranties of the Purchaser	11
ARTICLE 4 PROCEDURES	12
4.1 Sale Procedure Order; Vesting Order.....	12
4.2 Pre-Closing Cooperation	13
4.3 Break Fee	13
4.4 Acquisition of Assets on “As Is, Where Is” Basis	13
4.5 Title Transfer	14
ARTICLE 5 CONDITIONS	14
5.1 Conditions of the Purchaser	14
5.2 Conditions of the Receiver	15
ARTICLE 6 CLOSING AND DELIVERIES	16
6.1 Closing.....	16
6.2 Receiver’s Deliveries.....	16
6.3 Purchaser’s Deliveries	17
6.4 Subsequent Deliveries	17
ARTICLE 7 TERMINATION.....	17
7.1 Termination	17
7.2 Effects of Termination	18

TABLE OF CONTENTS

(continued)

	Page
ARTICLE 8 OTHER COVENANTS OF THE PARTIES; GENERAL	19
8.1 Access of the Receiver to Books and Records	19
8.2 Tax Matters	19
8.3 Insurance Matters	20
8.4 Risk of Loss	20
8.5 Removal of Purchased Assets	20
8.6 Receiver's Capacity	20
8.7 Public Announcements and Disclosure	20
8.8 Notices	21
8.9 Assignment	22
8.10 Expenses	22
8.11 Time of the Essence	22
8.12 Enurement	22
8.13 Waiver and Amendment	23
8.14 Further Assurances	23
8.15 Residual Senior Secured Debt	23
8.16 Execution and Delivery	23
8.17 Dispute Resolution	23
8.18 Attornment	23
8.19 Damages	24
8.20 Third Party Beneficiaries	24
8.21 Survival	24
 SCHEDULE A	 ASSIGNED CONTRACTS
SCHEDULE B	PERMITTED ENCUMBRANCES
SCHEDULE C	PURCHASED ASSETS
SCHEDULE D	SALE PROCEDURE
SCHEDULE E	FORM OF SALE PROCEDURE ORDER
SCHEDULE F	FORM OF VESTING ORDER
SCHEDULE G	ASSUMED LIABILITIES
SCHEDULE H	FORM OF PURCHASE PRICE ALLOCATION

TABLE OF CONTENTS

(continued)

Page

SCHEDULE I DEBTOR GST/HST NUMBERS

THIS ASSET PURCHASE AGREEMENT is made this 7th day of June, 2023

BETWEEN:

PRICEWATERHOUSECOOPERS INC., solely in its capacity as court-appointed receiver and manager of certain IE CA 3 Holdings Ltd. & IE CA 4 Holdings Ltd.

(the “**Receiver**”)

- and -

NYDIG ABL LLC, or its designee(s)

(the “**Purchaser**”)

RECITALS:

- A. Pursuant to an order of the Supreme Court of British Columbia (the “**Court**”) dated February 3, 2023 (as may in the future be supplemented, amended or restated from time to time, the “**Appointment Order**”), the Receiver was appointed as receiver and manager, without security, of the assets, undertakings and properties of IE CA 3 Holdings Ltd. (“**IE CA 3**”) and IE CA 4 Holdings Ltd. (“**IE CA 4**”, and together with IE CA 3, the “**Debtors**”), including all proceeds thereof (collectively, the “**Property**”);
- B. The Appointment Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- D. The Purchaser has agreed to act as a “stalking horse bidder” in connection with the sale of all of the right, title and interest of the Receiver and the Debtors, in and to the Purchased Assets (defined below) comprising the Property, meaning that, in the absence of the Receiver’s acceptance of one or more bids for the Purchased Assets made in accordance with the Sale Procedure (as defined below) which is superior to this Agreement (as determined by the Receiver in accordance with the Sale Procedure), the Purchaser has agreed to purchase all of the right, title and interest of the Receiver and the Debtors in and to the Purchased Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Sale Procedure and subject to obtaining the Vesting Order (as defined below);
- E. The Receiver intends to seek the Sale Procedure Order (as defined below) authorizing and directing the Receiver to enter into this Agreement and carry out the Sale Procedure.

NOW THEREFORE for good and valuable consideration, the adequacy and receipt whereof is hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Whenever used in this Agreement, including the schedules to this Agreement, the following words and terms shall have the meanings set out below:

“Agreement” means this asset purchase agreement, including all schedules, and all amendments or restatements, and references to **“Article”**, **“Section”** or **“Schedule”** mean the specified Article or Section of, or Schedule to, this Agreement;

“Ancillary Agreements” means, collectively, assignment and assumption agreements, and such other agreements, documents, assignments, or instruments of transfer and conveyance reasonably satisfactory in form and substance to the Purchaser and the Receiver;

“Appointment Order” has the meaning given in the Recitals;

“Approved Priority Claim Amount” means the amount of Priority Claims determined by the Receiver as of the Closing Date based on the best information available to the Receiver to be validly due and owing by either of the Debtors, if any, as set out in the Statement of Approved Priority Claims;

“Assigned Contracts” means those Contracts of either Debtor that are listed in Schedule "A", an amended list of which, subject to Section 2.4, may be delivered by the Purchaser to the Receiver no later than ten (10) Business Days before the Closing Date;

“Assumed Liabilities” has the meaning given in Section 2.3;

“Backup Bid” has the meaning given in the Sale Procedure;

“Bill of Sale” means one or more bills of sale duly executed by the Receiver in respect of the personal property forming part of the Purchased Assets;

“Books and Records” means, collectively, the books and records of the Debtors relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, bills of sale, shipping records, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media;

“Break Fee” has the meaning given in Section 4.3;

“Business” means the businesses of the Debtors conducted prior to the entry of the Appointment Order, including without limitation, the mining of Bitcoin;

“Business Day” means any day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

“Casualty” has the meaning given in Section 8.4;

“Claims” includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions or other similar processes;

“Closing” means the completion of the Transaction;

“Closing Certificate” has the meaning given in Section 5.3;

“Closing Date” means the date on which the Closing occurs as set forth in Section 6.1(a);

“Closing Time” has the meaning given in Section 6.1(b);

“Consent” means any approval, authorization, consent, Order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person;

“Contract Notice Date” has the meaning given in Section 2.4(a);

“Contracts” means the contracts, licences, leases, agreements, arrangements, documents, commitments, entitlements or engagements to which any or one or more of the Debtors is a party or by which any such Debtor or Debtors is bound;

“Court” has the meaning given in the Recitals;

“Credit Bid Amount” means (a) the MEFA Bid Amount of \$21,000,000, less (a) the Approved Priority Claim Amount, if any;

“Debtors” has the meaning given to it in the Recitals;

“Encumbrance” means any mortgage, charge, the Receiver’s Borrowings Charge, the Receiver’s Charge, pledge, hypothec, security interest, lien (statutory or otherwise), title retention agreement, trust, deemed or statutory trust, judgment, execution, levy, financial or monetary claim, encumbrance, adverse claim or interest, exception, reservation, easement, encroachment, servitude, restrictions on use, any right of occupancy, any right or claim of specific performance, any matter capable of registration against title, option, right of first refusal or similar right, right of pre-emption or privilege or any contract creating any of the foregoing, but shall not include the Permitted Encumbrances;

“Excluded Assets” means any Purchased Assets which are identified by the Purchaser in writing to the Receiver as Excluded Assets in accordance with Section 2.2;

“Final Order” means, in respect of any Order, such Order after (i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such Order, final determination of such appeal or application by the applicable court or appellate tribunal.

“Governmental Authorities” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or

entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"IE CA 3 MEFA" means the British Columbia law governed Master Equipment Finance Agreement dated May 25, 2021 among NYDIG (via its predecessor Arctos Credit, LLC) and IE CA 3, and the 4 schedules thereto;

"IE CA 3 MEFA Bid Amount" means the portion of the MEFA Bid Amount to be allocated to the Purchased Assets that are owned by IE CA 3, to be determined in accordance with Section 2.9;

"IE CA 4 MEFA" means the New York law governed Master Equipment Finance Agreement dated March 24, 2022 among NYDIG and IE CA 4, and the 9 schedules thereto;

"IE CA 4 Bid MEFA Amount" means the portion of the MEFA Bid Amount to be allocated to the Purchased Assets that are owned by IE CA 4, to be determined in accordance with Section 2.9;

"Laws" means currently existing applicable statutes, by-laws, rules, regulations, Orders, ordinances or judgments, in each case of any Governmental Authority having the force of law;

"Material Casualty" means a Casualty in respect of all or substantially all of the Purchased Assets;

"MEFA Bid Amount" means the aggregate of the IE CA 3 MEFA Bid Amount and the IE CA 4 MEFA Bid Amount, which shall total \$21,000,000;

"Order" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority;

"Outside Date" means September 30, 2023, or such later date as agreed to by the Parties;

"Parties" means the Receiver and the Purchaser, collectively, and **"Party"** means any one of them;

"Permitted Encumbrances" means the Encumbrances identified in Schedule B;

"Person" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"Priority Claim Cap" has the meaning given in Section 2.7;

"Priority Claims" means any valid statutory claims or portion thereof that are determined to rank in priority to the Senior Secured Debt, including without limitation, (a) any source deduction claim in favour of any Governmental Authority, including the Canada Revenue Agency, arising from the failure to deduct, withhold or remit any Taxes, (b) any claim in favour of an employee pursuant to section 81.4 of the *Bankruptcy and Insolvency Act* (Canada), and (c) any claim for amounts owing under the *Excise Tax Act* (Canada) (for greater certainty, solely to the extent any such claim is determined to rank in priority to the Senior Secured Debt);

"Property" has the meaning given in the Recitals;

“Purchase Price” has the meaning given in Section 2.5;

“Purchased Assets” means the bitcoin mining servers and other assets of the Debtors listed in Schedule “C” hereof, as such Schedule may be amended by excluding assets in accordance with Section 2.2 hereof, together with the Assigned Contracts, if any;

“Purchaser” means NYDIG ABL LLC and its successors and permitted assigns;

“Qualified Bid” has the meaning given in the Sale Procedure;

“Receiver” means PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver of the Debtors and the Property and not in its personal or corporate capacity;

“Receiver’s Borrowings Charge” has the meaning given in paragraph 24 of the Appointment Order;

“Receiver’s Charge” has the meaning given in paragraph 21 of the Appointment Order;

“Receiver’s Website” means <https://www.pwc.com/ca/en/services/insolvency-assignments/ieca34.html>;

“Receivership Proceeding” means the receivership proceeding with respect to the Debtors commenced by the Appointment Order;

“Sale Approval Motion” means an application by the Receiver seeking, *inter alia*, the Sale Procedure Order;

“Sale Procedure” means the sale procedure substantially in the form attached as Schedule “D” hereto, provided that such sale procedure is approved by the Court pursuant to the Sale Procedure Order;

“Sale Procedure Order” means an order of the Court substantially in the form attached as Schedule “E”, with such amendments as are acceptable to the Receiver and the Purchaser, among other things, approving the (a) Sale Procedure, (b) this Agreement, solely for the purposes of acting as the “stalking horse bid” in the Sale Procedure, and (c) the Break Fee;

“Senior Secured Debt” means, collectively, the Senior Secured IE CA 3 Debt and the Senior Secured IE CA 4 Debt;

“Senior Secured IE CA 3 Debt” means as of May 18, 2023, \$38,289,388.26, which represents the debt outstanding, 5% prepayment penalty, interest accrued under the IE CA 3 MEFA as of that date and a make-whole payment, plus all costs, expenses and charges and any other amounts recoverable by the Purchaser under the terms of the IE CA 3 MEFA;

“Senior Secured IE CA 4 Debt” means as of May 18, 2023, \$83,356,233.02, which represents the debt outstanding, 5% prepayment penalty, interest accrued under the IE CA 4 MEFA as of that date and a make-whole payment, plus all costs, expenses and charges and any other amounts recoverable by the Purchaser under the terms of the IE CA 4 MEFA;

“Statement of Approved Priority Claims” means a written statement prepared by the Receiver based on the best information available to it of all Approved Priority Claims, to be delivered to the Purchaser in accordance with Section 2.7.

“Successful Bid” has the meaning given to it in the Sale Procedure;

“Successful Bidder” has the meaning given to it in the Sale Procedure;

“Tax” and **“Taxes”** includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

“Title Direction” means a written direction from the Purchaser calling for and directing title to the Purchased Assets to be transferred to the Purchaser or one or more designees;

“Transaction” means the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement;

“Transfer Taxes” has the meaning given in Section 8.2(c);

“Vesting Order” means the Order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets, and vesting all right, title and interest of the Receiver and the Debtors in and to the Purchased Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), to be agreed to in form and substance by the Purchaser and the Receiver no later than five (5) Business Days following the selection of this Agreement as the Successful Bid and then attached hereto as Schedule “F”, with such amendments thereafter as are satisfactory to the Receiver and Purchaser acting reasonably.

“Vesting Order Motion” means a motion by the Receiver seeking the granting of the Vesting Order;

1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** — All references to money amounts are to lawful currency of the United States;
- (b) **Governing Law** — This Agreement is a contract made under and shall be governed by and construed in accordance with the Laws of the Province of British Columbia and the federal Laws of Canada applicable in the Province of British Columbia;

- (c) **Headings** — Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) **Including** — Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”;
- (e) **No Strict Construction** — The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (f) **Number and Gender** — Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (g) **Severability** — If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances; and
- (h) **Time Periods** — Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire all right, title and interest of the Receiver and the Debtors in and to the Purchased Assets on an as is and where is basis. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Receiver or any of its affiliates, subsidiaries, agents, employees or representatives.

1.4 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	- Assigned Contracts
Schedule B	- Permitted Encumbrances
Schedule C	- Purchased Assets
Schedule D	- Sale Procedure
Schedule E	- Form of Sale Procedure Order
Schedule F	- Form of Vesting Order
Schedule G	- Assumed Liabilities
Schedule H	- Form of Purchase Price Allocation
Schedule I	- Debtor GST/HST Numbers

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

On the Closing Date, as applicable, subject to the terms and conditions of this Agreement (which conditions, for greater certainty, include the issuance of the Sale Procedure Order, the determination by the Receiver that this Agreement is the Successful Bid, and the issuance of the Vesting Order), the Receiver shall transfer, sell, convey, and assign unto the Purchaser or its designee(s), all right, title and interest of the Receiver and the Debtors in and to, and the Purchaser or its designee(s) shall acquire and accept, the Purchased Assets pursuant to the Vesting Order, free and clear of all Encumbrances other than the Permitted Encumbrances.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the Excluded Assets and nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to the Purchaser. The Purchaser shall be entitled to designate any Purchased Assets as an "Excluded Asset" by notifying the Receiver in writing of its election to exclude from the Purchased Asset such Excluded Asset, at any time prior to the hearing of the Vesting Order Motion, and any Purchased Assets so designated shall be removed from Schedule "C". For greater certainty any designation of Excluded Assets pursuant to this Section 2.2 shall not affect the Purchase Price.

2.3 Assumed Liabilities

The Purchaser shall assume as of 12:01 a.m. (Toronto time) on the Closing Date, and shall pay, discharge and perform, as the case may be, the liabilities and obligations listed on Schedule "G" (collectively, the "**Assumed Liabilities**"). The Purchaser shall be entitled to amend Schedule "G" hereof by notifying the Receiver in writing of its election to add Assumed Liabilities, at any time

prior to the hearing of the Vesting Order Motion. For greater certainty any designation of additional Assumed Liabilities pursuant to this Section 2.3 shall not affect the Purchase Price.

Other than the Assumed Liabilities, the Transfer Taxes and the Permitted Encumbrances, the Purchaser shall not assume and shall not be liable for any liabilities or obligations of any Debtor of any nature whatsoever, whether present or future, known or unknown, absolute or contingent, and whether or not relating the Business, including without limitation, any Encumbrances and any liabilities related to any active or inactive litigation involving any of the Debtors.

2.4 Assignment and Assumption of Contracts

- (a) The Purchaser covenants to the Receiver that, no later than ten (10) Business Days prior to the return date of the Vesting Order Motion, the Purchaser shall advise the Receiver in writing as to which Contracts shall be Assigned Contracts (the “**Contract Notice Date**”). At any time on or prior to the Contract Notice Date, the Purchaser may elect to exclude any Contracts from the Assigned Contracts by giving written notice to the Receiver of its intention to do so. For greater certainty any addition or deletion of Assigned Contracts pursuant to this Section 2.4 shall not affect the Purchase Price.
- (b) The Assigned Contracts shall form part of the Purchased Assets assigned and transferred to the Purchaser or its designee(s) at or after Closing, the consideration for which is included in the Purchase Price. The Purchaser will assume and agree to perform and discharge the Assumed Liabilities under the Assigned Contracts pursuant to this Agreement and the applicable Ancillary Agreements.
- (c) At or prior to Closing, the Receiver and the Purchaser shall use commercially reasonable efforts to obtain all necessary Consents to assign the Assigned Contracts to the Purchaser. In the event that any Consent is not obtained by the Closing, the Receiver will co-operate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Contracts to the Purchaser, including assisting the Purchaser in attempting to obtain any such Consent after Closing for a period of four (4) weeks following Closing, or such further and other time period as may be agreed between the Receiver and the Purchaser, provided that pursuant to such arrangements the Purchaser agrees to pay and fully indemnifies the Receiver for all costs (including any fees and disbursements of the Receiver and its legal counsel), obligations or liabilities incurred thereunder or in connection therewith.
- (d) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, to the extent such Contract is not assignable under applicable Law without the consent of any other Person party thereto where the Consent of such Person has not been given or received.
- (e) For greater certainty, if any necessary Consent is required to assign an Assigned Contract but not obtained, neither the Receiver nor the Purchaser shall be in breach of this Agreement nor shall the Purchase Price be adjusted or the Closing delayed.

2.5 Purchase Price

The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be the aggregate of the following (the “**Purchase Price**”):

- (a) the Approved Priority Claim Amount, if any;
- (b) the Credit Bid Amount; and
- (c) the Assumed Liabilities,

to be satisfied in the manner set forth in Section 2.6. All applicable Transfer Taxes shall be paid by the Purchaser, on the Closing Date, subject to the terms hereof and the availability of any exemptions, deferrals or elections under any applicable legislation for such applicable Transfer Taxes.

2.6 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price on Closing by:

- (a) providing a cash payment to the Receiver in an amount equal to any Approved Priority Claim Amount;
- (b) providing a credit to IE CA 3 in the amount of the IE CA 3 MEFA Bid Amount against IE CA 3's obligations under the IE CA 3 MEFA;
- (c) providing a credit to IE CA 4 in the amount of the IE CA 4 MEFA Bid Amount against IE CA 4's obligations under the IE CA 4 MEFA;
- (d) delivering to the Receiver, for and on behalf of the Debtors, fully executed releases and waivers with respect of the amount outstanding under the IE CA 3 MEFA and IE CA 4 MEFA equal to IE CA 3 MEFA Bid Amount and the IE CA 4 MEFA Bid Amount, respectively; and
- (e) the assumption by the Purchaser of the Assumed Liabilities, if any, subject to Section 2.3.

2.7 Statement of Approved Priority Claims

The Receiver shall deliver to the Purchaser the Statement of Approved Priority Claims no later than five (5) Business Days before the Closing Date. If the aggregate of the Approved Priority Claims exceeds \$1,000,000 (the “**Priority Claim Cap**”), the Purchaser shall be entitled to elect, in its sole discretion, to terminate this Agreement.

2.8 *En Bloc* Bid

For the avoidance of doubt, and notwithstanding the MEFA Bid Amount is made up of the IE CA 3 MEFA Bid Amount and the IE CA 4 MEFA Bid Amount, the Purchaser is hereby agreeing to purchase all of the Purchased Assets for the Purchase Price, and shall under no circumstances be under any obligation to purchase fewer than all of the Purchased Assets.

2.9 Purchase Price Allocation

No later than June 16, 2023 the Purchaser shall prepare and deliver to the Receiver a written allocation of the Purchase Price in respect of each the Purchased Assets, in the form set out in Schedule "H" hereto. The Parties, acting reasonably, shall agree, prior to the Closing, on such allocation.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1 Representations and Warranties of the Receiver

The Receiver hereby represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date, the matters set out below.

- (a) The Receiver has been appointed by the Court as receiver of the Property pursuant to the Appointment Order, a copy of which is available on the Receiver's Website.
- (b) Subject to the issuance of the Sale Procedure Order, the Receiver has all necessary power and authority to enter into this Agreement.
- (c) Subject to the issuance of the Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Law, and the Receiver has the necessary power and authority to carry out its obligations hereunder; and
- (d) The Receiver has not authorized any Encumbrance affecting any of the Purchased Assets (other than any Permitted Encumbrances and any charge created by the Appointment Order).

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Receiver, as of the date hereof and as of the Closing Date, the matters set out below:

- (a) The Purchaser has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business.
- (b) The execution, delivery and performance of this Agreement by the Purchaser does not result in the violation of any of the provisions of its constating documents or by-laws;
- (c) This Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of

creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

- (d) Except for the Vesting Order, no Consent and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or the performance by the Purchaser of its obligations hereunder.

ARTICLE 4 PROCEDURES

4.1 Sale Procedure Order; Vesting Order

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to Court approval, and (ii) Closing the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid, and to the issuance of the Vesting Order.
- (b) On or before June 9, 2023, the Receiver shall file and serve the Sale Approval Motion on notice to parties reasonably satisfactory to the Purchaser;
- (c) The Receiver shall use its commercially reasonable efforts to obtain the Sale Procedure Order on or before June 15, 2023;
- (d) If one or more Qualified Bids (other than this Agreement) are received pursuant to the Sale Procedure, the Receiver shall pursue such bid(s) in accordance with the Sale Procedure, provided that nothing in this Section 4.1(d) will prevent this Agreement from constituting the Backup Bid in accordance with the Sale Procedure;
- (e) If this Agreement is determined to be the Successful Bid pursuant to the Sale Procedure, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion, on notice to parties reasonably satisfactory to the Purchaser;
- (f) The Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Sale Procedure Order, and if the Purchaser is the Successful Bidder, the Vesting Order, and any other order of the Court reasonably necessary to consummate the Transaction; and
- (g) From and after the date hereof, the Receiver shall (i) provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, the Sale Procedure or the Vesting Order (in the event this Agreement is selected as the Successful Bid), and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing, and (ii) not take any action that is intended to result in, or fail to take any action that would result in, the reversal, voiding, modification or staying of the Sale Procedure Order or, if Purchaser is the Successful Bidder, the Vesting Order.

4.2 Pre-Closing Cooperation

- (a) Prior to the completion of the Transaction, upon the terms, and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the Transaction, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, and the taking of such actions as are necessary to obtain any requisite Consent, provided that the Receiver shall not be obligated to make any payment or deliver anything of value to any Person (other than filing with and payment of any application fees to Governmental Authorities, all of which shall be paid, funded or reimbursed by the Purchaser) in order to obtain any Consent.
- (b) Each of the Receiver and the Purchaser shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 5.1 or Section 5.2 not being satisfied.

4.3 Break Fee

If this Agreement is terminated pursuant to Sections 7.1(a)(ii) or 7.1(a)(iii) herein and the Purchased Assets are sold pursuant to either the Successful Bid or the Backup Bid, or by the Purchaser or the Receiver, as applicable, pursuant to Sections 7.1(c), 7.1(d), or 7.1(h), the Purchaser shall be entitled to a break fee in the amount of \$630,000 (the "**Break Fee**"). The Break Fee, if payable, will be the sole and exclusive remedy as liquidated damages of the Purchaser, whether at Law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement. For greater certainty, the Receiver's obligation to pay the Break Fee pursuant to this Section 4.3 is expressly subject to the Court's approval and the granting of the Sale Procedure Order.

4.4 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are being purchased on an "as is, where is" basis as at the Closing Date;
- (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets;
- (c) it has conducted such inspections of the Purchased Assets as it deemed appropriate, satisfied itself with respect to the Purchased Assets and all matters connected with or related to the Purchased Assets, and has relied entirely upon its own investigations and inspections in entering into this Agreement to acquire the Purchased Assets without regard to any information made available or provided by the Receiver or its officers, directors, employees or agents; and
- (d) it will accept the Purchased Assets in their state, condition and location as at the Closing Time, and except as expressly set forth in this Agreement, the Receiver makes no representations, warranties, statements or promises on its own behalf

or on behalf of the Debtors' in favour of the Purchaser concerning the Purchased Assets, or the Receiver's or the Debtors' right, title or interest in or to the Purchased Assets, which the Purchaser acknowledges are being acquired on an as-is where-is basis, or the uses or applications of the Purchased Assets, whether express or implied, statutory or collateral, arising by operation of Law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by applicable Law do not apply to the sale of the Purchased Assets and are hereby waived by the Purchaser.

4.5 Title Transfer

Prior to Closing, the Purchaser shall deliver not later than three (3) Business Days prior to Closing, the Title Direction which direction shall call for and direct title to the Purchased Assets to be transferred to the Purchaser or one or more designees, and the Receiver shall transfer title on Closing in accordance with the Title Direction.

ARTICLE 5 CONDITIONS

5.1 Conditions of the Purchaser

The obligations of the Purchaser to complete the purchase of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Receiver made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time and the Purchaser shall have received a certificate from a senior officer of the Receiver confirming to the knowledge of such senior officer, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Receiver shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Receiver shall have executed and delivered, or caused to be executed and delivered, to the Purchaser on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Purchaser or its solicitors;
- (d) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid; and

- (f) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

The conditions set out in this Section 5.1 are conditions to completion of the Transaction but are not conditions to the enforceability of this Agreement.

5.2 Conditions of the Receiver

The obligations of the Receiver to complete the purchase of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions (each of which is acknowledged to be inserted for the exclusive benefit of the Receiver and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct as at the Closing Time and with the same effect as if made at and as at the Closing Time and the Receiver shall have received a certificate from a senior officer of the Purchaser confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to be executed and delivered to the Receiver on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Receiver or its solicitors;
- (d) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid; and
- (f) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no Order shall have been issued which restrains or prohibits the completion of the Transaction.

The Receiver may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition,

in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

The conditions set out in this Section 5.2 are conditions to completion of the Transaction but are not conditions to the enforceability of this Agreement.

5.3 Closing Certificate

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file with the Court a certificate, substantially in the form attached to the Vesting Order (the “**Closing Certificate**”), upon receiving written confirmation from the Purchaser that all conditions to Closing have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

ARTICLE 6 CLOSING AND DELIVERIES

6.1 Closing

- (a) Closing shall occur on a Business Day (the “**Closing Date**”) to be designated by the Purchaser and reasonably acceptable to the Receiver after the satisfaction or waiver of all conditions set out in Sections 5.1 and 5.2 on notice of not less than ten (10) Business Days’ unless otherwise agreed to by the parties.
- (b) Closing shall take place at 10:00 a.m. Pacific Time (the “**Closing Time**”) on the Closing Date and completed virtually by the exchange of electronic copies of the applicable deliverables, or such other time or method as the Parties may agree upon in writing. Any tender of documents hereunder may be made upon the Receiver or the Purchaser or upon the solicitors acting for the Party on whom tender is desired. Any tender of money hereunder shall be made to the Receiver. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

6.2 Receiver’s Deliveries

At the Closing,

- (a) the sale, transfer, assignment, and conveyance by the Receiver of the Purchased Assets to the Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, shall be effected by the issued and entered Vesting Order and by execution and delivery by the Receiver of the Bill(s) of Sale and Ancillary Agreements (completed in accordance with the Title Direction);
- (b) the Purchaser shall receive delivery, pursuant to the Vesting Order, of free and clear title and possession of the Purchased Assets on an “as is, where is” basis in accordance with Section 4.4 subject to the Permitted Encumbrances, provided that delivery shall occur in situ wherever such Purchased Assets are located on the Closing Date;

- (c) the Receiver shall deliver a true and complete copy of the Vesting Order and the Closing Certificate; and
- (d) the Receiver shall deliver a bring-down certificate executed by the Receiver, in a form satisfactory to the Purchaser, acting reasonably, certifying that all of the representations and warranties of the Receiver hereunder remain true and correct in all material respects as of the Closing.

6.3 Purchaser's Deliveries

At the Closing,

- (a) the Purchaser shall deliver the releases and waivers set out in Section 2.6(d) executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably;
- (b) the Purchaser shall advance funds equal to the Approved Priority Claims, if any, to the Receiver;
- (c) the Purchaser shall pay the applicable Transfer Taxes to the Receiver on the Purchased Assets;
- (d) the Purchaser shall deliver the Ancillary Agreements to which it is party, executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably;
- (e) the Purchaser shall deliver a bring-down certificate executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably, certifying that all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing;
- (f) the Purchaser shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Receiver, acting reasonably; and
- (g) the Purchaser shall deliver the Title Direction, in form and substance satisfactory to the Receiver, acting reasonably.

6.4 Subsequent Deliveries

The Purchaser may from time to time at or after the Closing require that the Receiver execute and deliver to the Purchaser or as it may direct such further Ancillary Documents, Bill(s) of Sale and/or other necessary documents to allow the transfer of all or any part of the Purchased Assets not previously effectively transferred. The Receiver shall execute and deliver such additional documentation as soon as reasonably possible after request therefor.

ARTICLE 7 TERMINATION

7.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately (i) if the Sale Procedure Order is not granted by the Court by June 15, 2023, (ii) upon the selection by the Receiver of a Successful Bid if this Agreement is neither the Successful Bid nor the Backup Bid selected at such time, or (iii) upon the Closing of the Successful Bid(s) if this Agreement is the Backup Bid;
- (b) subject to any approvals required from the Court, if any, by mutual written consent of the Receiver and the Purchaser;
- (c) by notice from the Receiver to the Purchaser or from the Purchaser to the Receiver, following the issuance of an Order or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets as contemplated hereby;
- (d) automatically and without any action by either the Receiver or the Purchaser if Closing has not occurred on or before the Outside Date, provided that the reason for the Closing not having occurred is not due to any act or omission, or breach of this Agreement, by the Party proposing to terminate this Agreement;
- (e) by the Purchaser, in accordance with Section 8.4, in the event of a Material Casualty;
- (f) by the Purchaser, in accordance with Section 2.7, in the event that the Approved Priority Claim Amount exceeds the Priority Claim Cap;
- (g) by the Receiver, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.2 and such violation or breach has not been waived by the Receiver or cured by the Purchaser within five (5) Business Days of the Receiver providing notice to the Purchaser of such breach, unless the Receiver is in material breach of its obligations under this Agreement; and
- (h) by the Purchaser, if there has been a material violation or breach by the Receiver of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.1 and such violation or breach has not been waived by the Purchaser or cured by the Receiver within five (5) Business Days of the Purchaser providing notice to the Receiver of such breach, unless the Purchaser is in material breach of its obligations under this Agreement.

7.2 Effects of Termination

If this Agreement is terminated pursuant to Section 7.1:

- (a) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other hereunder, except as contemplated by Sections 1.2(b) (*Governing Law*), 4.3 (*Break Fee*), 8.6 (*Receiver's Capacity*), 8.7 (*Public Announcements and Disclosure*), 8.8 (*Notices*), 8.10 (*Expenses*), 8.13 (*Waiver and Amendment*), 8.15 (*Residual Senior Secured*

Debt), 8.17 (*Dispute Resolution*), 8.18 (*Attornment*), 8.19 (*Damages*) and 8.20 (*Third Party Beneficiaries*), which shall survive termination.

- (b) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver and the Debtors, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof.

ARTICLE 8

OTHER COVENANTS OF THE PARTIES; GENERAL

8.1 Access of the Receiver to Books and Records

The Receiver shall, for a period of six (6) years from the completion of the Transaction, have access to the Books and Records relating to the Purchased Assets and the Assumed Liabilities which are transferred and conveyed to the Purchaser pursuant to this Agreement, and the right to copy such material at its own cost, to the extent necessary or useful in connection with the completion of the administration of the Receivership Proceeding.

8.2 Tax Matters

- (a) The Purchaser and the Receiver agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) The Purchaser and the Receiver shall each be responsible for the preparation of their own statements, if any, required to be filed under the *Income Tax Act* (Canada) and other similar focus in accordance with applicable Tax Laws.
- (c) All amounts payable by the Purchaser to the Receiver pursuant to this Agreement are exclusive of any, sale, goods and services, harmonized sales, value added, use, consumption, personal property, customs, import, excise, transfer, land transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "**Transfer Taxes**") and all Transfer Taxes are the responsibility of and for the account of the Purchaser. The Purchaser and the Receiver agree to cooperate to determine the amount of Transfer Taxes payable in connection with the Transaction. If the Receiver is required by applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Purchaser, the Purchaser shall pay such Transfer Taxes to the Receiver on Closing, against a statement from the Receiver separately indicating the amount of Transfer Tax payable, unless the Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case the Receiver shall not collect any such applicable Transfer Taxes from the Purchaser provided the Purchaser, in lieu of payment of such applicable Transfer Taxes to the Receiver, delivers to the Receiver such certificates, elections or other documentation required by applicable Law or the administration thereof to substantiate and affect the exemption claimed

by the Purchaser. The GST/HST registration numbers of the Debtors are set out in Schedule "H" hereto.

- (d) The Purchaser shall indemnify and save the Receiver harmless from and against all claims and demands for payment of the Transfer Taxes referenced in this Section 8.2, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.
- (e) The Purchaser and the Receiver shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

8.3 Insurance Matters

Until the Closing, the Receiver shall keep in full force and effect all of their applicable existing insurance policies and give any notice or present any claim under any such insurance policies.

8.4 Risk of Loss

The Purchased Assets shall be at the risk of the Receiver until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a "**Casualty**"), the Purchaser shall still complete the purchase of the Purchased Assets on an "as is, where is" basis without any adjustment to the Purchase Price payable hereunder, and take an assignment from the Receiver of all insurance proceeds payable in respect of the Casualty, provided that, in the event of a Material Casualty, the Purchaser shall have the option, in its discretion, to terminate this Agreement.

8.5 Removal of Purchased Assets

The Purchaser and the Receiver shall use commercially reasonable best efforts to remove the Purchased Assets from the locations at which they are situate following closing, in accordance with and consistent with the terms of any applicable storage agreements that may constitute Assigned Contracts.

8.6 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to the Sale Procedure, this Agreement, including in its execution, PricewaterhouseCoopers Inc. has acted and is acting solely in its capacity as receiver of the Property pursuant to the Appointment Order and not in its personal, corporate, or any other capacity, and the Receiver and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

8.7 Public Announcements and Disclosure

The Receiver shall be entitled to disclose this Agreement to the Court, to the parties in interest to the proceedings in connection with the receivership of the Debtors, and to any parties entitled to access in accordance with the Sale Procedure, and to publish this Agreement on the Receiver's Website. The Purchaser shall be entitled to issue any press release or public statement or public communication with respect to this Agreement or Transaction, in form and content at its sole discretion. Any press release or public statement or public communication with respect to this

Agreement or Transaction issued by the Receiver shall be subject to the Purchaser's approval as to form and content, acting reasonably.

8.8 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by e-mail:

- (a) in the case of a notice to the Purchaser at:

NYDIG ABL LLC
One Vanderbilt Avenue
66th Floor
New York City, NY 10017
U.S.A

Attention: Emily Barron
Email emily.barron@nydig.com

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: Chris Burr
Email: chris.burr@blakes.com

- (b) in the case of a notice to the Receiver at:

PricewaterhouseCoopers Inc.
250 Howe Street
Suite 1400
Vancouver, BC V6C 3S7

Attention: Michelle Grant
Email: michelle.grant@pwc.com

with a copy (which shall not constitute notice) to:

Osler, Hoskin & Harcourt LLP
The Guinness Tower
1055 W. Hastings St. #1700
Vancouver, BC V6E 2E9

Attention: Mary Buttery
Email: mbuttery@osler.com

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. Pacific Time. However, if the notice is delivered or transmitted after 5:00 p.m. Pacific Time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section 8.8.

8.9 Assignment

The Purchaser may at any time assign all or any portion of its rights or obligations arising under this Agreement to an affiliate of the Purchaser; provided, however, that (a) any assignee of all or any portion of the Purchaser's rights under this Agreement that is not also an assignee of a sufficient portion of the applicable Senior Secured Debt to pay its portion of the assigned Purchase Price with a credit against such assigned Senior Secured Debt shall be required to pay its portion of the assigned Purchase Price in cash, and (b) in the event of any such assignment, the Purchaser shall be jointly and severally liable for the obligations it assigns and shall not be relieved of any liability or obligation hereunder. Subject to the foregoing, no Party may assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party. Nothing herein shall prevent the Purchaser from directing that title to all or any part of the Purchased Assets be transferred to one or more Persons.

8.10 Expenses

Each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement, provided that nothing in this Section 8.10 shall affect the payment of the Break Fee in accordance with Section 4.3.

8.11 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties under this Agreement.

8.12 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

8.13 Waiver and Amendment

No amendment, supplement, modification or waiver of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby (email being sufficient).

8.14 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the Transaction, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

8.15 Residual Senior Secured Debt

The execution, delivery and effectiveness of this Agreement shall not directly or indirectly: (a) be construed as a waiver or release of the Purchaser's right, title and interest in and to the Senior Secured Debt that does not form part of the MEFA Bid Amount, and such indebtedness will remain owing by the Debtors and continue to accrue to the Purchaser from and after the Closing Date, (b) constitute a consent or waiver of any past, present or future violations of any provisions of any of the Other Agreements (as defined in the IE CA 3 MEFA) or the Loan Documents (as such term is defined in the IE CA 4 MEFA) or this Agreement, and (c) amend, modify or operate as a waiver of any provision of any of the Other Agreements (as defined in the IE CA 3 MEFA) or the Loan Documents (as such term is defined in the IE CA 4 MEFA) or any right, power or remedy of the Purchaser. Except as expressly set forth herein, the Purchaser reserves all of its rights, powers, and remedies under the Other Agreements (as defined in the IE CA 3 MEFA) or the Loan Documents (as such term is defined in the IE CA 4 MEFA), and applicable law.

8.16 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by email in PDF format or other electronic means, and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

8.17 Dispute Resolution

If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 7, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct.

8.18 Attornment

Each Party agrees: (a) that any legal proceeding relating to this Agreement shall be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such legal proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c)

not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 8.18.

8.19 Damages

Under no circumstance shall any of the Parties or their representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

8.20 Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.21 Survival

No covenants, representations or warranties of any Party contained in this Agreement or any document delivered pursuant hereto will survive the completion of the sale and purchase and assumption of the Purchased Assets and the Assumed Liabilities hereunder, except for the covenants that by their terms are to be satisfied after the completion of the Transaction, which covenants will continue in full force and effect in accordance with their terms.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

PRICEWATERHOUSECOOPERS INC., solely
in its capacity as court-appointed receiver and
manager of IE CA 3 Holdings Ltd. and IE CA 4
Holdings Ltd.

By: _____
Name:
Title:

NYDIG ABL LLC

By: _____
Name: Emily Barron
Title: Head of Debt Financing

**SCHEDULE A
ASSIGNED CONTRACTS**

- 1.
- 2.
- 3.

**SCHEDULE B
PERMITTED ENCUMBRANCES**

Nil

**SCHEDULE C
PURCHASED ASSETS**

A. Mining Machines

Machine type	Origin of Manufacture China	Origin of Manufacture Non China	Machines to be Repaired	Total
Antminer S19 (82T, 86T, 90T, 92T, 95T)	5,133	9,634	145	14,912
Antminer S19 Pro (100T, 104T, 110T, 92T, 96T)	805	1,278	250	2,333
Antminer S19a (92T, 96T) and Antminer S19a Pro (110T)	817	19	17	853
Antminer S19j (82T, 86T), Antminer S19j L (86T, 90T)	56	11	0	67
Antminer S19j Pro (88T, 92T, 96T, 98T, 100T, 104T)	8,583	8,686	382	17,651
Machine type not confirmed	98	132	322	552
Malaysian Machines	15,492	19,760	1,116	36,368
Antminer S19Js - Shipment currently held in Malaysia	0	1,520	0	1,520
Total	15,492	21,280	1,116	37,888

B. Other Assets

**SCHEDULE D
SALE PROCEDURE**

SALE PROCESS

Introduction

By Order of the Honourable Mr. Justice Milman of the Supreme Court of British Columbia (the “**Court**”) dated February 3, 2023 (the “**Receivership Order**”), PricewaterhouseCoopers Inc. was appointed receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended, without security, of all the assets, undertakings and property (the “**Property**”) of IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd. (the “**Debtors**”). The Property of the Debtors includes approximately 37,500 Antminer S19, Antminer S19 Pro, and Antminer S19j Pro bitcoin miners (the “**Miners**”).

On June 13, 2023, the Court granted an Order (the “**Sale Process Approval Order**”) approving the sale solicitation procedures set forth herein (the “**SSP Procedures**”) together with an asset purchase agreement between NYDIG ABL LLC (the “**Stalking Horse Credit Bidder**”) and the Receiver, dated June 7, 2023 (the “**Stalking Horse APA**”), defining the terms of a bid by the Stalking Horse Credit Bidder to purchase all of the Miners and take an assignment of certain Assigned Contracts (as defined in the Stalking Horse APA), if any (the “**Purchased Assets**”), for the Purchase Price (as defined below), subject to certain conditions, adjustments, and other terms defined therein. The Sale Process Approval Order and these SSP Procedures shall exclusively govern the process (the “**Sale Process**”) for soliciting and selecting bids for the sale of all or substantially all of the Property of the Debtors.

All dollar amounts expressed herein, unless otherwise noted, are in United States currency. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Stalking Horse APA.

Stalking Horse APA

The Stalking Horse APA has been approved as the stalking horse bid under paragraph 5 of the Sale Process Approval Order.

SSP Procedures

These SSP Procedures describe, among other things, the Property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Miners, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids, and the approval thereof by the Court.

The Receiver shall administer the SSP Procedure with the assistance of Foundry Digital LLC (the “**Sales Agent**”). In the event that there is disagreement as to the interpretation or application of this SSP Procedure, the Court will have jurisdiction to hear and resolve such dispute.

The Receiver will use reasonable efforts to complete the SSP Procedures in accordance with the timelines set out herein. The Receiver shall be permitted to make such adjustments to the timeline that it determines are reasonably necessary.

Opportunity

The SSP Procedures are intended to solicit interest in, and opportunities for, a sale of all, or substantially all, of the Miners (each, a “**Sale**”). Approximately 1,500 of the Miners are located at the supplier’s warehouse in Malaysia. The remaining approximately 36,000 Miners are located in storage in Mackenzie and Cranbrook, British Columbia.

The Receiver has entered into the Stalking Horse APA which constitutes a Qualified Bid for all purposes and at all times under the SSP Procedures. The “Purchase Price” for the Purchased Assets under the Stalking Horse APA, exclusive of all applicable Transfer Taxes, is comprised of the aggregate of the following: (i) the amount of Priority Claims determined by the Receiver as of the Closing Date to be validly due and owing by either of the Debtors, if any (the “**Approved Priority Claim Amount**”); (ii) a credit bid of US\$21 million, less the Approved Priority Claim Amount, if any (the “**Credit Bid Amount**”); and (iii) all liabilities and obligations listed on Schedule “G” to the Stalking Horse APA (collectively, the “**Assumed Liabilities**” and together with the Approved Priority Claim Amount and the Credit Bid Amount, the “**Purchase Price**”).

Notwithstanding the Stalking Horse APA, all interested parties are encouraged to submit Qualified Bids based on any configuration of Miners they wish. As discussed further below, a “Qualified Bid” under these SSP Procedures may be comprised either of an *en bloc* bid for all or substantially all of the Miners, or a number of non-overlapping separate bids which collectively relate to all or substantially all of the Miners and: (a) which meet the requirements for a “Qualified Bid” under these SSP Procedures; and (b) in respect of which, and in discussions with the Receiver and the Sales Agent, the bidders have agreed to syndicate and appoint a representative for purposes of participating in the Sale Process including, if applicable, the Auction (as defined below).

Sale Process Timeline

The Receiver currently anticipates that the Sale Process will commence on or about June 21, 2023:

Milestone	Date	Day
Send Teaser Letter and Advertise SSP	Within 2 calendar days of Sale Process commencement	Friday, June 23, 2023
Due Diligence Period (NDAs signed, access to VDR granted and site visits organized)	2 calendar days after Sale Process commencement to 32 calendar days thereafter	Up to and including Tuesday, July 25, 2023
Final Bid Deadline	5 calendar days after the Due Diligence Period ends	Monday, July 31, 2023
Bid Assessment	Within 5 Business Days of Final Bid Deadline	Tuesday, August 8, 2023

Milestone	Date	Day
Notification of Auction Date (if applicable)	Within 5 Business Days of completion of Bid Assessment	Tuesday, August 15, 2023
Auction Date (if applicable)	2 Business Days after Notification of Auction Date	Thursday, August 17, 2023
Court Approval to implement Stalking Horse APA (if applicable)	Within 10 calendar days of the Auction Date (subject to Court availability)	Monday, August 28, 2023
Period of time to finalize definitive documents for Successful Bid (if applicable)	Within 10 calendar days of the Auction Date	Monday, August 28, 2023
Court Approval of Successful Bid (if applicable)	Within 22 calendar days of the Auction Date (subject to Court availability)	Friday, September 8, 2023

“As Is, Where Is”

The sale of the Miners will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or any of its agents, except to the extent set forth in the relevant final sale agreement with a Successful Bidder.

Free of Any and All Claims and Interests

In the event of a Sale, all of the right, title and interest of the Debtors in and to all Miners sold or transferred will, at the time of such sale or transfer, be sold or transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively the "**Claims and Interests**") pursuant to one or more approval and vesting orders made by the Court. Contemporaneously with such approval and vesting orders being made, all such Claims and Interests shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

Solicitation of Interest

As soon as reasonably practicable and, in any event, by no later than two (2) calendar days after commencement of the Sale Process, the Receiver will:

- a) cause a notice of the Sale Process contemplated by these SSP Procedures, and such other relevant information which the Receiver considers appropriate, to be published in applicable industry publications, websites and/or forums; and
- b) in consultation with the Sales Agent, prepare a summary describing the Opportunity, outlining the SSP Procedures and inviting recipients to express their interest in making a Qualified Bid (a **“Teaser Letter”**) for distribution to potential bidders.

Participation Requirements and Due Diligence

In order to participate in the Sale Process, an interested party must deliver to the Receiver at the address specified herein (including by email), and prior to the distribution of any confidential information by the Receiver and/or the Sales Agent to such interested party (including access to the confidential virtual data room (the **“VDR”**)), an executed non-disclosure agreement in form and substance satisfactory to the Receiver (an **“NDA”**), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by a Successful Bid (as defined below).

A potential bidder that has executed an NDA, as described above, and who the Receiver, in its sole discretion, determines has a reasonable prospect of completing a Sale contemplated herein, will be deemed a **“Qualified Bidder”** and will be promptly notified of such classification by the Receiver.

The Receiver shall provide any person deemed to be a Qualified Bidder with access to the VDR and the Receiver shall provide to Qualified Bidders further access to such reasonably required due diligence materials and information relating to the Miners as the Receiver deems appropriate. The Receiver makes no representation or warranty as to the information to be provided through the due diligence process or otherwise, regardless of whether such information is provided in written, oral or any other form, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder executed and delivered by the Receiver and approved by the Court.

Upon the reasonable request of a Qualified Bidder, on-site inspections of the Miners may be arranged by the Receiver in its sole discretion. As the Miners are currently stored in remote locations in British Columbia that are not readily accessible by the Receiver, only one site visit per storage location will be organized for each Qualified Bidder. No site visits to the supplier's warehouse in Malaysia will be organized or permitted.

Submission of Qualified Bids

A Qualified Bidder that desires to make a bid for some or all of the Miners must deliver either:

- a) a final, written, binding offer (each, a **“Final Bid”**) in the form of a fully executed purchase and sale agreement substantially in the form of the template purchase and sale agreement located in the VDR (the **“Template APA”**); or
- b) a signed letter confirming that the Qualified Bidder wishes to assume and perform the obligations of the Stalking Horse Credit Bidder under the Stalking Horse APA, subject to the necessary adjustment to the Purchase Price to provide cash consideration and to include the Minimum Incremental Overbid (as defined below) and the Break Fee (as

defined below), and detailing any adjustments, revisions or other terms that the Qualified Bidder proposes be included in the Stalking Horse APA (a “**Confirmation of Assumption**”),

in each case to the Receiver at the address specified herein (including by email transmission) so as to be received by the Receiver not later than 4:00 p.m. PDT on July 31, 2023, or such later date as may be agreed by the Receiver and communicated in writing to all Qualified Bidders (the “**Final Bid Deadline**”).

Requirements for Qualified Bid

A Final Bid will only be considered a Qualified Bid if it is submitted by a Qualified Bidder and complies with the following conditions (each, a “**Qualified Bid**”):

- a) it has been received by the Final Bid Deadline;
- b) it contains
 - a. a duly executed purchase and sale agreement substantially in the form of the Template APA and a blackline of the executed purchase and sale agreement to the Template APA; or
 - b. a Confirmation of Assumption compliant with the requirements above;
- c) it includes a letter stating that the Final Bid is irrevocable until there is a Successful Bid (as defined below), provided that if such Qualified Bidder is selected as the Successful Bidder, its Final Bid shall remain an irrevocable offer until the earlier of (i) the completion of the sale to the Successful Bidder and (ii) the Outside Date;
- d) it provides written evidence, satisfactory to the Receiver, of (a) a firm, irrevocable financial commitment for all required funding or financing or (b) evidence of the Qualified Bidder’s financial wherewithal to close the bid using unencumbered funds on hand;
- e) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- f) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer to a bank account specified by the Receiver, or such other form of payment acceptable to the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 20% of the total consideration in the Qualified Bid to be held and dealt with in accordance with these SSP Procedures;
- g) it is not conditional upon:
 - a. the outcome of unperformed due diligence by the Qualified Bidder, and/or
 - b. obtaining financing; and

- h) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Qualified Bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Receiver, or any of its advisors, except as expressly stated in the purchase and sale agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Qualified Bid; and (iv) has had the benefit of independent legal advice in connection with its Qualified;
- i) it contains evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body), if applicable: and
- j) if:
 - a. it is an *en bloc* bid, the aggregate consideration, as calculated and determined by the Receiver in its sole discretion, to be paid in cash by the Qualified Bidder under the Qualified Bid exceeds the aggregate of the Purchase Price under the Stalking Horse APA, plus the Break Fee and plus US\$1 million (the “**Minimum Incremental Overbid**”); or
 - b. it is for a select portion of the Miners comprising less than all or substantially all of the Miners (each, a “**Partial Bid**”) then, upon receipt of such bid, the Receiver may, in consultation and with the assistance of the Sales Agent, engage with applicable Qualified Bidders that submitted a Partial Bid to confirm whether, in aggregate, all applicable Partial Bids collectively: (i) relate to all or substantially all of the Miners; and (ii) provide cash consideration in excess of the aggregate of the Purchase Price under the Stalking Horse APA, plus the Break Fee and the Minimum Incremental Overbid. In the event the Receiver identifies two or more Partial Bids which meet the foregoing requirements, the Receiver will seek the agreement of each applicable Qualified Bidder to syndicate its respective bid with the other applicable Partial Bids (the “**Syndicated Bid**”) and appoint a representative (each, a “**Syndicated Bid Representative**”) for purposes of advancing the Syndicated Bid through the remainder of the Sale Process including, if applicable, the Auction.

Both *en bloc* bids and Syndicated Bids which comply with the foregoing conditions shall be considered to be “Qualified Bids”.

The Stalking Horse Credit Bidder shall be deemed to be a Qualified Bidder, and the Stalking Horse APA shall be deemed to be a Qualified Bid, for all purposes of these SSP Procedures, including for purposes of the Auction (if applicable). No deposit is required in connection with the Stalking Horse APA.

The Receiver may, in its reasonable discretion, waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such non-compliant bid to be a Qualified Bid in accordance with these SSP Procedures.

Assessment of Qualified Bids

The Receiver will assess the Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable but no later than five (5) Business Days after the Final Bid Deadline.

If the Receiver determines that (a) no Qualified Bids other than the Stalking Horse APA were received, or (b) at least one additional Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bids will be consummated, the Receiver shall (i) forthwith terminate these SSP Procedures, (ii) notify each Qualified Bidder (if any) that these SSP Procedures have been terminated, (iii) notify the Stalking Horse Credit Bidder that it is the Successful Bidder, and (iv) as soon as reasonable practicable after such termination, file an application with the Court seeking approval, after notice and hearing, to implement the Stalking Horse APA.

If the Receiver determines in its reasonable discretion that (a) one or more Qualified Bids were received, and (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, the Receiver may, in its sole discretion, advise all Qualified Bidders/Syndicated Bid Representative, as applicable, that an auction (the “**Auction**”) will be held and that such Qualified Bidders/Syndicated Bid Representative, as applicable, are entitled to participate in the Auction.

Auction

If an Auction is to be held, the Receiver will conduct the Auction commencing at 10:00 a.m. PDT on August 17, 2023 (the “**Auction Date**”) at the offices of the Receiver's legal counsel, Osler Hoskin & Harcourt LLP, Guinness Tower, 1055 W Hastings St #1700, Vancouver, BC, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, subject to such adjournments as the Receiver may consider appropriate.

The Auction shall run in accordance with the following procedures:

- a) prior to 4:00 p.m. PDT on August 16, 2023, each Qualified Bidder or Syndicated Bid Representative, as applicable, that has made a Qualified Bid and the Stalking Horse Bidder, must inform the Receiver whether it intends to participate in the Auction (the parties who so inform the Receiver that they intend to participate are hereinafter referred to as the “**Auction Bidders**”);
- b) the identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder participating in the Auction;
- c) only representatives of the Auction Bidders, the Receiver, the Sales Agent and such other persons as permitted by the Receiver (and the advisors to each of the foregoing entities)

are entitled to attend the Auction in person (and the Receiver shall have the discretion to allow such persons to attend by video- or tele-conference);

- d) the Receiver may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances, for conducting the Auction, including with respect to the ability of multiple Auction Bidders to combine to present a single bid, provided that such rules are (i) not inconsistent with these SSP Procedures, general practice in insolvency proceedings, or the Receivership Order and (ii) disclosed to each Auction Bidder at the Auction;
- e) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- f) the Receiver shall arrange to have a court reporter attend at the Auction;
- g) each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with any other person, without the express written consent of the Receiver, regarding the Sale Process, that has not been disclosed to all other Auction Bidders;
- h) prior to the Auction, the Receiver will provide unredacted copies of the Qualified Bid(s) which the Receiver believes is/are (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) (the "**Starting Bid**") to the Stalking Horse Credit Bidder and to all Qualified Bidders or Syndicated Bid Representatives, as applicable, that have made a Qualified Bid;
- i) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a "**Subsequent Bid**") that the Receiver determines is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or otherwise better offer than the then current highest and best bid (the "**Leading Bid**"), in each case by at least US\$500,000, or such amount as may be determined by the Receiver prior to, and announced at, the Auction;
- j) the Stalking Horse Credit Bidder shall be permitted, in its sole discretion, to submit Subsequent Bids, which Subsequent Bids may be comprised of increased credit bids up to the full amount of the secured indebtedness owing by the applicable Debtor to the Stalking Horse Credit Bidder, provided, however, that such Subsequent Bids are made in accordance with these SSP Procedures;
- k) to the extent not previously provided (which shall be determined by the Receiver), an Auction Bidder submitting a Subsequent Bid must submit, at the Receiver's discretion, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver), demonstrating such Auction Bidder's ability to close the transaction proposed by the Subsequent Bid;

- l) only the Auction Bidders will be entitled to make a Subsequent Bid at the Auction; provided, however, that in the event that any Qualified Bidder or Syndicated Bid Representative, as applicable, elects not to attend and/or participate in the Auction, such Qualified Bidder's Qualified Bid or Syndicated Bid Representative's Syndicated Bid, shall nevertheless remain fully enforceable against such Qualified Bidder or Syndicated Bid Representative, as applicable, if it is selected as the Successful Bid (as defined below);
- m) all Auction Bidders shall have the right to, at any time, request that the Receiver announce the then-current Leading Bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any and all questions such Auction Bidder may have regarding the Leading Bid;
- n) the Receiver reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things (i) facilitate discussions between the Receiver and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Receiver with such additional evidence as the Receiver, in its reasonable business judgment, may require that that Auction Bidder has sufficient internal resources to consummate the proposed transaction at the prevailing overbid amount;
- o) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed; and
- p) no bids (from Qualified Bidders, Syndicated Bid Representatives, or otherwise) shall be considered after the conclusion of the Auction.

At the end of the Auction, the Receiver shall select the successful bid (the “**Successful Bid**”, with such bidder being the “**Successful Bidder**”). Upon selection of a Successful Bidder, the Successful Bidder shall deliver as soon as practicable an executed transaction document, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Application (as defined below).

If an Auction is conducted, the Auction Bidder and/or Qualified Bidder/Syndicated Bid Representative (as applicable) with the next highest or otherwise best Qualified Bid at the Auction or, if such Qualified Bidder/Syndicated Bid Representative (as applicable) did not participate in the Auction, submitted in this Sale Process, as determined by the Receiver, will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder's final overbid) (the “**Backup Bid**”) open until the earlier of (a) two business days after the date of closing of the Successful Bid; and (b) September 30, 2023 (the “**Outside Date**”).

The Receiver shall have selected the final Successful Bid(s) and the Backup Bid(s) as soon as reasonably practicable after the Auction Date and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than August 28, 2023, which definitive documentation shall be conditional only upon the receipt of the Approval Order and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than September 8, 2023, or such longer period

as shall be agreed to by the Receiver in writing. In any event, the Successful Bid must be closed by no later than the Outside Date, or such other date as may be agreed to by the Receiver in writing.

Approval of Successful Bid

The Receiver shall apply to the Court (the “**Approval Application**”) for an order approving the Successful Bid and the Backup Bid (as applicable) and vesting title to any purchased Miners in the name of the Successful Bidder or the Backup Bidder (as applicable) (the “**Approval Order**”). The Approval Application will be held on a date to be scheduled by the Receiver and confirmed by the Court. The Receiver shall use best efforts to schedule the Approval Application on or before September 8, 2023 subject to Court availability. The Approval Application may be adjourned or rescheduled by the Receiver on notice to the Service List prior to the Approval Application. The Receiver shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Receiver for the Approval Application, which material shall be acceptable to the Successful Bidder, acting reasonably.

If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then such Successful Bidder will forfeit its Deposit and the Backup Bid, if there is one, will be deemed to be the Successful Bid hereunder and the Receiver shall effectuate a transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

Deposits

All Deposits shall be retained by the Receiver in a bank account specified by the Receiver. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposit paid by the Backup Bidder shall be retained by the Receiver until two business days after the date of closing of the Successful Bid or the Outside Date, whichever is later, or, if the Backup Bid becomes the Successful Bid, shall be released by the Receiver and applied to the purchase price to be paid upon closing of the Backup Bid.

All Deposits of all Qualified Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders within five (5) business days of the date upon which the Successful Bid and any Backup Bid is approved by the Court. If the Auction does not take place or these SSP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the Qualified Bidders within five (5) business days of the date upon which it is determined that the Auction will not take place or these SSP Procedures are terminated, as applicable.

If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close the applicable transaction, it shall forfeit its Deposit to the Receiver; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Receiver has against such breaching entity.

Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any other statute or are otherwise required at law in order to implement a Successful Bid or Backup Bid, as the case may be.

Notice

The addresses used for delivering documents to the Receiver as required by the terms and conditions of these SSP Procedures are set out below. A bid and all associated documentation shall be delivered to the Receiver by electronic mail, personal delivery or courier.

To the Receiver:

PricewaterhouseCoopers Inc.
Suite 1400, 250 Howe St.
Vancouver, BC V6C 3S7

Attention: Michelle Grant / Morag Cooper
Tel. No.: 604.806.7184 / 236.308.4439
Facsimile: 604.806.7806
Email: michelle.grant@pwc.com / morag.c.cooper@pwc.com

with a copy to:

Osler, Hoskin & Harcourt LLP
The Guinness Tower
1055 W Hastings St #1700
Vancouver, BC V6E 2E9

Attention: Mary Buttery, K.C. / Emily Paplawski
Tel. No.: 604.692.2752 / 403.260.7071
Facsimile: 778.785.2745
Email: muttery@osler.com / epaplawski@osler.com

Reservation of Rights

The Receiver: (a) may reject, at any time any bid (other than the Stalking Horse Credit Bid) that is (i) inadequate or insufficient, or (ii) not in conformity with the requirements of these SSP Procedures or any orders of the Court applicable to the Debtors; (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify the SSP Procedures at any time in order to maximize the results obtained; and (c) in accordance with the terms hereof, may accept bids not in conformity with these SSP Procedures to the extent that the Receiver determines, in its reasonable business judgment, that doing so would benefit the Debtors' estates and their stakeholders.

The Receiver may, in its reasonable discretion, extend the Final Bid Deadline, the Outside Date, the date for selection of the final Successful Bid(s) and the Backup Bid(s), the date for finalization

and execution of definitive documentation in respect of the Successful Bid, and/or the date for the hearing of the Approval Application.

Prior to the conclusion of the Auction, the Receiver may impose such other terms and conditions, on notice to the relevant Auction Bidders, as the Receiver may determine to be in the best interests of the Debtors' estate and their stakeholders that are not inconsistent with any of the procedures in these SSP Procedures.

These SSP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any potential bidder, Qualified Bidder, Syndicated Bid Representative, Auction Bidder, Successful Bidder or Backup Bidder, other than as specifically set forth in definitive documentation that may be executed by the Receiver.

No Amendment

There shall be no amendments to these SSP Procedures without the prior written consent of the Receiver and the Stalking Horse Credit Bidder, or further order of the Court obtained on reasonable notice to the Receiver.

Further Orders

At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

SCHEDULE E
FORM OF SALE PROCEDURE ORDER

No. S230488
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

NYDIG ABL LLC

PETITIONER

And:

IE CA 3 HOLDINGS LTD. AND IE CA 4 HOLDINGS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE
HONOURABLE JUSTICE
MILMAN

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June 13, 2023

THE APPLICATION of PricewaterhouseCoopers Inc. as Receiver and Manager (the “**Receiver**”) of IE CA 3 Holdings Ltd. and IE CA 4 Holdings Ltd. (together, the “**Debtors**”) coming on for hearing at Vancouver, British Columbia, on the 13th day of June, 2023; AND ON HEARING from Mary Buttery, K.C. counsel for the Receiver and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the Receiver’s Third Report to the Court, dated June 7, 2023; AND UPON REVIEWING the Order made after Petition Appointment of Receiver of the Honourable Mr. Justice Milman, granted February 3, 2023 (the “**Receivership Order**”); THIS COURT ORDERS THAT:

SERVICE

1. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the Service List established in this proceeding is hereby dispensed with.

SSP PROCEDURES, STALKING HORSE BID AND BREAK FEE

2. The sale solicitation process attached as **Schedule “B”** hereto, subject to any amendments thereto that may be made in accordance therewith (the “**SSP**”) be and is hereby approved.
3. The Receiver and its advisors (including Foundry Digital LLC as sales agent for and on behalf of the Receiver) is hereby authorized and directed to implement the SSP and do all things as are reasonably necessary to conduct and give full effect to the SSP and carry out its obligations thereunder.
4. The Receiver is hereby authorized and directed to execute and enter into the definitive “stalking horse” asset purchase agreement (the “**Stalking Horse APA**” and the transactions provided therein, the “**Stalking Horse Bid**”) with NYDIG ABL LLC, or its designated nominee, as purchaser (the “**Stalking Horse Credit Bidder**”), substantially on the terms set out in the stalking horse asset purchase agreement attached as **Schedule “C”** hereto, subject to such amendments, additions and/or deletions permitted by the Stalking Horse APA and as may be negotiated between the Receiver and the Stalking Horse Credit Bidder.
5. The Stalking Horse Bid submitted by the Stalking Horse Credit Bidder is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the SSP, provided that nothing herein approves the sale to and the vesting of any assets or property in the Stalking Horse Credit Bidder pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets and property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Credit Bidder is the Successful Bidder (as defined in the SSP) pursuant to the SSP.
6. The Break Fee, as defined in the Stalking Horse APA is hereby approved and the Receiver is authorized and directed to pay the Break Fee in the manner and circumstances described therein.

FOUNDRY AGREEMENT

7. The Receiver is hereby authorized and empowered to enter into the engagement letter agreement with Foundry Digital LLC.

AUTHORITY TO ASSIGN THE DEBTORS INTO BANKRUPTCY

8. The Receiver is hereby authorized, if the Receiver deems advisable, to assign the Debtors, or either one of them, into bankruptcy pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
9. The Receiver shall not be disqualified from acting as Trustee in Bankruptcy by reason only of its role as Receiver.

BY THE COURT

REGISTRAR

SCHEDULE “A”

List of Counsel

SCHEDULE “B”

Sales Solicitation Process

SCHEDULE “C”

Stalking Horse APA

**SCHEDULE F
FORM OF VESTING ORDER**

**SCHEDULE G
ASSUMED LIABILITIES**

The Assumed Liabilities shall comprise:

- (a) ***Obligations under Assigned Contracts*** - all of the Debtors' liabilities and obligations arising on or after the Closing Date under the Assigned Contracts, and all payments or obligations required to be paid, performed or discharged in connection with the assignment of such Assigned Contracts; and
- (b) ***Obligations after Closing*** - all liabilities and obligations arising on or after the Closing Date, but only to the extent that they relate to or arise out of the Purchaser's ownership of the Purchased Assets on or after the Closing Date.

SCHEDULE H**PURCHASE PRICE ALLOCATION****IE CA 3 Purchased Assets**

	S19 Pro series		S19 series		
	# of Machines	Purchase Price Allocation	# of Machines	Purchase Price Allocation	Sub-total
Non-China Origin	[#]	\$[#]	[#]	\$[#]	\$[#]
China Origin	[#]	\$[#]	[#]	\$[#]	\$[#]
Machines to be Repaired	[#]	\$[#]	\$[#]		
Unknown Type	[#]	\$[#]	\$[#]		
Malaysian Machines	[#]	\$[#]	\$[#]		
TOTAL					\$[#]

IE CA 4 Purchased Assets

	S19 Pro series		S19 series		
	# of Machines	Purchase Price Allocation	# of Machines	Purchase Price Allocation	Sub-total
Non-China Origin	[#]	\$[#]	[#]	\$[#]	\$[#]
China Origin	[#]	\$[#]	[#]	\$[#]	\$[#]
Machines to be Repaired	[#]	\$[#]	\$[#]		
Unknown Type	[#]	\$[#]	\$[#]		
Malaysian Machines	[#]	\$[#]	\$[#]		
TOTAL					\$[#]

SCHEDULE I**GST/HST NUMBERS OF DEBTORS**

Debtor	GST/HST Numbers
IE CA 3 Holdings Ltd.	773179262RT0001
IE CA 4 Holdings Ltd.	773158068RT0001

TAB 11

Court File No. CV-20-00646729-00CL

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

THE HONOURABLE
JUSTICE KOEHNEN

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)
)

WEDNESDAY, THE 14th
DAY OF APRIL, 2021

BETWEEN:

PILLAR CAPITAL CORP.

Applicant

-and-

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. C-43, AS AMENDED

**ORDER
(Stalking Horse Bidding Procedures)**

THIS MOTION, made by MNP Ltd., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”) including the real property and buildings located at 60 Industrial Park Road, Chesley, Ontario (the “**Property**”) for an order:

- (a) abridging the time for service of the Motion Record of the Receiver dated April 13th, 2021 (the “**Motion Record**”) and validating service thereof;
- (b) approving the stalking horse bidding procedures, substantially in the form attached as Schedule “A” hereto (the “**Stalking Horse Bidding Procedures**”), and an extension of the offer deadline (the “**Deadline**”) contemplated and set forth in the sale process (the “**Sale Process**”) approved by the order of Justice Cavanagh dated October 29, 2020 from April 16, 2021 to April 30, 2021;



- (c) authorizing the Receiver to execute the Stalking Horse Bid (as defined herein);
- (d) approving a sealing order for the confidential supplement to the Fifth Report (as defined herein) (the “**Confidential Supplement**”);
- (e) approving the fifth report of the Receiver dated April 13th, 2021 to the Court (the “**Fifth Report**”), and the activities of the Receiver as described therein;
- (f) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP, as set out in the Fifth Report, the fee affidavit of Jerry Henechowicz sworn April 12, 2021 (the “**Henechowicz Affidavit**”), and the fee affidavit of Robert Kennedy sworn April 13, 2021 (the “**Kennedy Affidavit**”, and together with the Henechowicz Affidavit, the “**Fee Affidavits**”); and
- (g) such other matters considered relevant to the Receiver’s administration of this proceeding.

was heard this day judicial videoconference via Zoom due to the COVID-19 pandemic.

ON READING the Motion Record, the Receiver’s Fifth Report and Confidential Supplement, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Amanda Campbell sworn April 13, 2021, filed:

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

STALKING HORSE BIDDING PROCEDURES

3. **THIS COURT ORDERS** that the Stalking Horse Bidding Procedures, in the form attached as **Schedule “A”** hereto (subject to any amendments that may be made in accordance therewith), is hereby approved.

4. **THIS COURT ORDERS** that the Deadline be and is hereby extended from April 16, 2021 to April 30, 2021.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the Stalking Horse Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Stalking Horse Bidding Procedures.

6. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, directors, employees, agents or and controlling persons, shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bidding Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Receiver in performing its obligation under the Stalking Horse Bidding Procedures.

STALKING HORSE BID

7. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute the asset purchase agreement dated April 13th, 2021 among the Receiver and Westmount Park Investments Inc. (the “**Stalking Horse Bid**”), *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Purchased Assets (as defined in the Stalking Horse Bid) to Westmount Park Investments Inc. pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Stalking Horse Bidding Procedures, if the Stalking Horse Bid is the Successful Offer (as defined in the Stalking Horse Bidding Procedures).

SEALING ORDER

8. **THIS COURT ORDERS** that the Confidential Supplement shall be sealed and kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title to these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

RECEIVER'S ACTIVITIES

9. **THIS COURT ORDERS** that the Fifth Report, and the activities of the Receiver as described therein, is hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the Fifth Report and the Fee Affidavits, are hereby approved.

GENERAL

11. **THIS COURT ORDERS** that the Receiver may from time to time apply to this court for advice and directions on the discharge of its duties and powers hereunder.

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

Schedule “A”
Stalking Horse Bid Procedures

**STALKING HORSE BIDDING PROCEDURES
IN THE MATTER OF THE COURT-SUPERVISED RECEIVERSHIP OF TURUSS
(CANADA) INDUSTRY CO., LTD.**

Stalking Horse Bidding Procedures

Capitalized terms not otherwise defined herein shall have meaning set forth in the Sale Process or Auction Procedures (each, as defined herein). The Sale will be completed by MNP Ltd. in its capacity as receiver of Turuss, appointed pursuant to a Receivership Order dated September 18, 2020 (the “**Receiver**”).

The Court has issued the following Orders in the receivership proceedings of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”) in respect of a Court approved sale process (the “**Sale Process**”):

- (i) on October 29, 2020, the Court issued an Order (the “**Sale Process Order**”) authorizing the Sale Process in respect of the assets, undertaking and properties of Turuss including the real property and buildings located at 60 Industrial Park Road, Chesley, Ontario (the “**Property**”), with a bid deadline of January 11, 2021;
- (ii) on January 5, 2021, the Court issued an Order approving and authorizing an extension to the Deadline to February 26, 2021; and
- (iii) on March 26, 2021, the Court issued an Order (the “**Second Extension Order**”) approving and authorizing a further extension of the Deadline to April 16, 2021, and an auction procedures attached as Schedule “A” to the Second Extension Order (the “**Auction Procedures**”).

On April 14, 2021, the Court issued an order (the “**Stalking Horse Procedures Order**”) which, among other things:

- (i) supplemented and amended (where necessary and applicable) the existing Sale Process to accept, for the purpose of conducting a “stalking horse” solicitation process with respect to the Property (the “**Stalking Horse Process**”), an asset purchase agreement dated April 13th, 2021 (the “**Stalking Horse Bid**”) between the Receiver and Westmount Park Investments Inc. (the “**Stalking Horse Bidder**”);

- (ii) the payment of an inclusive break fee in the amount of \$100,000 (plus applicable HST) and an expense reimbursement in the amount of \$75,000 (plus applicable HST) (collectively, the “**Break Fee**”) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid;
- (iii) approving and authorizing the stalking horse bidding procedures (the “**Stalking Horse Bidding Procedures**”); and
- (iv) further extend the Deadline to April 30, 2021.

Set forth below is the Stalking Horse Bidding Procedures to be employed with respect to the sale (the “**Sale**”) of the Property.

Subject to Court availability, within ten (10) business days following an auction (the “**Auction**”), if applicable, the Receiver shall bring a motion (the “**Approval Motion**”) seeking the granting of an approval and vesting order (the “**AVO**”) by the Court authorizing the Receiver to proceed with authorizing and approving the Sale of the Property to the Qualified Bidder making the Successful Offer (being, the Successful Offeror).

This Stalking Horse Bidding Procedures shall supplement and modify (where necessary) the Sale Process. In the event there is any conflict between any provision in the Sale Process, Auction Procedures or the Stalking Horse Bidding Procedures, the terms of this Stalking Horse Bidding Procedures shall govern and prevail.

Assets to Be Sold en bloc

The Receiver is offering for Sale all of the Turuss’ right, title and interest in and to all of the Property en bloc and only a bid for all the Property, in whole and not in part, can be eligible to be a Qualified Offer (as defined herein). The Receiver will be responsible for conducting the Stalking Horse Bidding Procedures and Auction Procedures (if applicable).

The Bidding Process

The Stalking Horse Procedures Order authorizes the Receiver to continue to market and sell the Property pursuant to Sales Process, as supplemented and modified pursuant the Stalking Horse Bidding Procedures. The Receiver shall have the right to adopt, modify and implement

such further and other rules and procedures (including rules and procedures that may depart from those set forth herein) that, in its reasonable business judgment, will enhance and improve the goals of the Stalking Horse Bidding Procedures provided, however, any material modifications shall require a further Order of the Court.

Participation Requirements

For clarity, a “**Qualified Offeror**” is a Prospective Offeror who submits a Binding Offer (as defined herein) in substantially the same form as the Stalking Horse Bid submitted in the form of the template APS, for a purchase price of at least \$6,675,000 and satisfies the Bid Requirements (as defined herein), as determined by the Receiver in its sole discretion. Any bid meeting these criteria that is received by the Receiver before the Deadline is a qualified offer (a “**Qualified Offer**”).

Bid Deadline

A Prospective Offeror that desires to make a bid shall deliver written copies of its bid and the Bid Requirements to the Receiver not later than 5:00 p.m. (local Toronto time) on the Deadline.

Bid Requirements

All binding bids and accompanying materials (other than the Stalking Horse Bid) (“**Binding Offers**”, and individually a “**Binding Offer**”) submitted by a Prospective Offeror must provide for the following, in addition to the requirements set forth in the Sale Process, unless any such requirement is waived by the Receiver (collectively, the “**Bid Requirements**”):

- (v) a base cash purchase price or transaction value equal to or greater than \$6,675,000, being the Stalking Horse Bid (\$6,500,000) plus the Break Fee of \$175,000 (the “**Base Purchase Price**”);
- (vi) delivery of the Binding Offer by the Prospective Offeror to the Receiver on or before the Deadline;
- (vii) the identity of each person or entity (including its shareholders) that is sponsoring or participating in the Binding Offer and the complete terms of such participation, evidence of corporate authority, and proof of such bidder’s financial ability to

perform the proposed transaction to the satisfaction of the Receiver, acting reasonably;

- (viii) a provision stating that the Prospective Offeror's bid is irrevocably open for acceptance until the selection of the Successful Offeror;
- (ix) the Deposit in the form of a wire transfer (to a bank account specified by the Receiver), in an amount equal to at least 10% of the total consideration contained in the Binding Offer;
- (x) an acknowledgement and representation that the Prospective Offeror: (i) has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents, the Property and/or any other assets to be acquired and liabilities to be assumed in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business and/or assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in any definitive documents;
- (xi) no conditions based upon: (i) the outcome of any further due diligence, (ii) obtaining financing, or (iii) any other conditions to closing, except the usual limited conditions such as the issuance by the Court of an order approving the transaction and vesting title in and to the Prospective Offeror (as set out in the APS); and
- (xii) an executed copy of the APS and a blackline of the Prospective Offeror's proposed purchase agreement against the Stalking Horse Bid.

The Receiver reserves the right to determine the value of any Qualified Offer, and which Qualified Offer constitutes the best bid (the "**Lead Bid**"), for the purposes of the Auction (if applicable). Details of the Lead Bid will be provided by the Receiver to all Qualified Offerors after the Deadline and no later than 5:00p.m. (local Toronto Time) two (2) business days before the date scheduled for the Auction.

A Binding Offer may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Offer being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Offer being determined shall result in the forfeiture of such Prospective Offeror's deposit as liquidated damages and not as a penalty.

The Receiver may determine whether to entertain Binding Offers for the Property that do not conform to one or more of the requirements specified herein and deem such Binding Offer(s) to be a Qualified Offer.

Notwithstanding anything contained herein, the Receiver shall have the right to enter into an exclusive transaction for the sale of the Property, or any portion thereof, outside the Stalking Horse Bidding Procedures or Auction Procedures prior to the selection of a Successful Offeror.

Notwithstanding the Bid Requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Offer.

The Auction Process

If one or more Qualified Offers (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Deadline, the Receiver may implement the Auction. In the event the Receiver elects, in its discretion, to implement the Auction, the Receiver shall advise all Qualified Offerors of the Lead Bid and invite all Qualified Offerors (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Receiver in accordance with the Auction Procedures (each invited Qualified Offeror being a "Selected Offeror", as defined in the Auction Procedures).

For greater certainty, the Auction shall be governed by the terms set out in the Auction Procedures.

If no Qualified Offer is submitted by the Deadline, then the Stalking Horse Bid shall be the Successful Offer, and the Stalking Horse Bidder shall be the Successful Offeror.

Highest versus Best Bid

In determining the Lead Bid or any Opening Bid, the highest and/or best bid during each round of bids, and the Successful Offer, the Receiver is not required to select the bid with the highest purchase price amount and may, exercising its reasonable business judgment, select another bidder on the basis that it is the best bid even though not the highest purchase price. Without limiting the foregoing, the Receiver may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable.

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee, in each case payable by the Receiver to the Stalking Horse Bidder only in the event that a Successful Offer other than the Stalking Horse Bid is accepted by the Receiver, approved by the Court and the associated transaction is completed.

Acceptance of Qualified Bids

The sale of the Property to any Successful Offeror by the Receiver is expressly conditional upon the approval of the Successful Offer by the Court at the hearing of the Approval Motion. The presentation of the Successful Offer to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Offer unless and until the Court approves the Successful Offer. The Receiver will be deemed to have accepted a Successful Offer bid only when the Successful Offer has been approved by the Court at the hearing on the Approval Motion.

Approval Motion

The Approval Motion shall, subject to court availability, be made returnable as soon as reasonably possible following the selection of the Successful Offer. The Receiver, in the exercise of its business judgement, reserves its right to the extent consistent with the Stalking Horse Bid to

change the date of the hearing of the Approval Motion in order to achieve the maximum value for the Property.

Miscellaneous

The Stalking Horse Bidding Procedures and Auction Procedures are solely for the benefit of the Receiver and nothing contained in the Sale Process Order, the Sale Process, the Stalking Horse Bidding Procedures, or the Auction Procedures shall create any rights in any other person (including, without limitation, any Prospective Offeror or Qualified Offeror, and any rights as third party beneficiaries or otherwise). The bid protections incorporated in the Stalking Horse Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Notwithstanding anything else contained herein, if it becomes evident to the Receiver that no Qualified Offers will be received, the Receiver, may terminate the Stalking Horse Bidding Procedures.

The Receiver may reject at any time before the issuance and entry of an order approving a Successful Offer, any bid that is: (i) inadequate or insufficient, (ii) not in conformity with the Bid Requirements, or any order of the Court, or (iii) contrary to the best interests of the receivership estate. The Receiver shall have the right to modify the Stalking Horse Bidding Procedures, or impose additional terms and conditions on the sale of the Property, acting reasonably.

The Receiver shall not have any liability whatsoever to any person or party for any act or omission related to the Stalking Horse Bidding Procedures or Auction Procedures. By submitting a bid, each Prospective Offeror shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.

PILLAR CAPITAL CORP.

Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Stalking Horse Agreement)**

DENTONS CANADA LLP

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Lawyers for the Receiver

Campbell, Amanda

From: Koehnen, Mr. Justice Markus (SCJ) <Markus.Koehnen@scj-csj.ca>
Sent: Wednesday, April 14, 2021 11:28 AM
To: Kennedy, Robert; Loberto, Daniel; Jerry.Henechowicz@mnp.ca; michael.litwack@mnp.ca; David P. Preger
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: Re: Stalking Horse Approval: Pillar Capital Corp. v. Turuss (Canada) Industry Co., Ltd. (CV-20-00646729-00CL)
Attachments: Turuss order 20210414.pdf

[WARNING: EXTERNAL SENDER]

Email Endorsement

1. This is a motion to extend the time to receive bids on the sale of a real property and to approve a stalking horse bid which contains a break fee. The motion was brought on short notice. Potentially opposing parties were only advised of the motion yesterday.
2. No one appeared to oppose the motion. Receiver's counsel advised me that one potential bidder wrote back in response to the notice of motion to indicate that it would be submitting a bid superior to the stalking horse bid.
3. Short notice of the motion is justified. The current deadline for submission of bids is April 16. That now needs to be extended given that the stalking horse bid was only agreed to yesterday.
4. It makes good sense to have a stalking horse bid in light of the confidential valuations of the property which I have reviewed.

5. The stalking horse bid contains a break fee of 2.69% which includes expense reimbursement. That amounts to \$175,000. Once again, in light of the confidential valuations I have reviewed, the break fee is justified in that it is likely to generate value superior to the stalking horse bid plus the break fee. In the event it does not, it is a risk worth taking.
6. The receiver also seeks an order sealing the valuation of the property. I grant that order. Given that bids are still being received and that after the deadline for bids, the receiver proposes to hold an auction amongst qualified bidders, it makes good sense to retain confidentiality in the receiver's valuations of the real property. Similarly, even after a final agreement was entered into, it makes good sense to retain confidentiality in the valuation in case the final bid does not actually close.
7. Finally, the receiver seeks improvement of its expenses and disbursements. I have reviewed the receiver's 5th report which sets out the expenses of the steps it and its counsel have incurred. I find the expenses reasonable in the circumstances.
8. I attach a signed order.

Justice Markus Koehnen
Ontario Superior Court of Justice
361 University Ave.
Toronto, Ont.
M5G 1T3
416-327-5284

TAB 12

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Dawson Wallace Construction Ltd. v. TIC Interiors Ltd.](#) | 2018 ABPC 237, 2018 CarswellAlta 2285, [2018] A.W.L.D. 4385, 297 A.C.W.S. (3d) 530 | (Alta. Prov. Ct., Oct 9, 2018)

1981 CarswellOnt 109
Supreme Court of Canada

R. v. Ron Engineering p; Construction (Eastern) Ltd.

1981 CarswellOnt 109, 1981 CarswellOnt 602, 1981 J.E. 220, [1981] 1 S.C.R. 111,
[1981] S.C.J. No. 13, 119 D.L.R. (3d) 267, 13 B.L.R. 72, 35 N.R. 40, J.E. 81-220

REGINA et al. v. RON ENGINEERING p; CONSTRUCTION (EASTERN) LTD.

Martland, Dickson, Estey, McIntyre and Lamer JJ.

Heard: November 13, 1980

Judgment: January 27, 1981

Counsel: *B. Johnston*, Q.C. and *M. Fleishman*, for appellants.

Hyman Soloway, Q.C. and *J. Shields*, for respondent.

Subject: Corporate and Commercial; Contracts

Related Abridgment Classifications

Construction law

II Contracts

II.1 Building contracts

II.1.a Execution of formal contract

II.1.a.i Tendering process

II.1.a.i.I Miscellaneous

Construction law

III Bonds and sureties

III.1 Bonds

III.1.a Bid bonds

Contracts

V Mistake

V.5 Miscellaneous

Headnote

Construction Law --- Building contract — Execution of formal contract — Tendering process — General

Construction Law --- Bonds and sureties — Bid bonds

Contracts — Tenders — Error in tender — Tender accepted — Tenderer bound by tender.

R submitted a tender in response to a call for tenders by Her Majesty. R's tender was for \$2,748,000 and upon the opening of the tenders was found to be some \$632,000 lower than the next lowest tender. R had realized that it had made a mistake in calculating its tender price but had not communicated this fact to Her Majesty prior to the opening of tenders. Subsequent to the opening of tenders but prior to acceptance of any, R sent a telex to Her Majesty advising that it had made an error in calculating its tender amounting to \$750,058 and requesting to withdraw its tender without penalty. The error was not apparent on the face of the tender.

Her Majesty delivered to R a form of construction contract for signature. R refused to sign the contract. Her Majesty took the position that she was entitled to retain R's tender deposit of \$150,000 and award the contract to the second lowest bidder. R

brought action for return of the deposit and Her Majesty counterclaimed for damages for R's failure to carry out the terms of its tender.

The trial Judge found in favour of Her Majesty on the retention of the deposit but dismissed the counterclaim. The Ontario Court of Appeal reversed the trial Judge and ordered return of the deposit to R.

Held, on appeal:

The appeal was allowed.

R's position in these proceedings was that it had not withdrawn its tender but rather had, by notifying Her Majesty of the error before the tender was accepted, made the tender incapable in law of being accepted. Thus, R sought recovery of the \$150,000 which accompanied its tender as required by the terms and conditions of tender.

R argued that a latent or patent mistake in a tender renders the tender revocable and the deposit recoverable so long as Her Majesty had been advised of the error before she accepted the tender notwithstanding the provisions of the "Information for Tenderers" which permitted Her Majesty to retain the deposit if a tender was withdrawn after submission.

The mistake in this case was not apparent on the face of the tender document. The mistake was bona fide and not an improper attempt to recall a tender.

The Court of Appeal of Ontario had followed its earlier decision in *Belle River Community Arena Inc. v. W.J.C. Kaufmann Co.* and held that an owner could not accept a tender if advised before acceptance of a mistake in a fundamental term of the tender. Under the "General Conditions" and "Information for Tenderers", a unilateral contract arose automatically when the tender was submitted. The tender could not be withdrawn for a period of 60 days after tenders were opened.

As this contract clearly provided for forfeiture of the deposit if the tender was withdrawn, R took the position that its tender was not withdrawn. However, R argued that forfeiture of its deposit could only occur if it failed to furnish certain bonds after receipt of the construction contract signed by Her Majesty. As it had never received such a signed contract, no right to forfeiture ever arose. The Court found that certain provisions of the "Information for Tenderers" dealing with the consequences of execution of the construction contract were irrelevant to the issue of the right to recovery of the deposit.

There are circumstances which would prevent the unilateral contract arising from submission of a tender from being formed such as a submission which in law was not a tender. However, this is to be determined when the tender is submitted and not at some later date after demonstration by the tenderer of a calculation error. In this case, the rights of the parties crystallized upon submission of the tender, including the exposure to forfeiture of the deposit. The bid, once made, was irrevocable under the terms and conditions of the tender. This contract obliged R to enter into a construction contract upon acceptance of the tender. The deposit was to ensure performance of this obligation.

There was no mistake in submission of the tender by R in the form and manner in which it was submitted. There is no principle of law which rendered such a tender incapable of acceptance. Her Majesty did not know of the mistake before the contract created by the tender was formed. There was no apparent error on the face of the tender nor was the quantum so low as to give rise to an inference of mistake. Therefore, the issue concerned not the law of mistake but the application of the forfeiture provisions of the tender documents. The Court was not concerned whether a second contract, the construction contract, could have arisen in the face of a known error in the tender.

It is possible that a clearly deficient form of tender might prevent formation of a contract or the rule of non est factum could arise but not on the facts of this case. The Court was not concerned with Her Majesty's counterclaim for failure to enter into the second contract as this issue was not under appeal from its original dismissal at trial. Also not raised was whether the deposit to be forfeited could be considered a penalty. The Court did not consider it material that the construction contract offered to R for signature had a blank space for the time specified for completion by the tenderer. The tenderer could have inserted the appropriate number.

Table of Authorities

Cases considered:

Belle River Community Arena Inc. v. W.J.C. Kaufmann Co. (1978), 20 O.R. (2d) 447, 4 B.L.R. 231, 87 D.L.R. (3d) 761 (C.A.) — overruled

Foster v. Mackinnon (1869), L.R. 4 C.P. 704 — referred to

McMaster University v. Wilchar Const. Ltd., [1971] 3 O.R. 801, 22 D.L.R. (3d) 9 — distinguished

Authorities considered:

Cheshire and Fifoot, *The Law of Contract* (9th ed., 1976), pp. 239-40.

Fridman, *The Law of Contract* (1976), p. 81.

APPEAL from the decision of the Ontario Court of Appeal, reported at [24 O.R. \(2d\) 332](#), [98 D.L.R. \(3d\) 548](#) (*sub nom. Ron Enrg. p; Const. Eastern Ltd. v. R.*), requiring return to the tenderer of a deposit submitted with its tender.

The judgment of the Court was delivered by Estey J.:

1 The Ontario Court of Appeal, reversing the trial Judge, directed the return to the respondent-contractor (hereinafter referred to as the "contractor") of \$150,000 paid by the contractor to the appellant-owner (hereinafter referred to as the "owner") by way of a tender deposit at the time of filing a bid in response to a call for tenders by the owner [[24 O.R. \(2d\) 332](#), [98 D.L.R. \(3d\) 548](#)].

2 Under the general conditions applicable to the call for tenders, the owner issued as part of the tender documentation, "Information for Tenderers", para. 13 of which, under the heading "Tender Deposit", stated in part:

Except as otherwise herein provided the tenderer guarantees that if his tender is withdrawn before the Commission shall have considered the tenders or before or after he has been notified that his tender has been recommended to the Commission for acceptance or that if the Commission does not for any reason receive within the period of seven days as stipulated and as required herein, the Agreement executed by the tenderer, the Performance Bond and the Payment Bond executed by the tenderer and the surety company and the other documents required herein, the Commission may retain the tender deposit for the use of the Commission and may accept any tender, advertise for new tenders, negotiate a contract or not accept any tender as the Commission may deem advisable.

Pursuant to the rules applicable to the call for tenders, the contractor submitted a tender for \$2,748,000 on or before 3 p.m., 4th July 1972. Accompanying the contractor's tender was a certified cheque in the amount of \$150,000 as required by the terms and conditions upon which tenders were called. The document already referred to, "Information for Tenderers", further provided with respect to the tender deposit:

After the execution of the Contract and the receipt by the Commission of the Performance Bond and the Payment Bond the tender deposit of the successful tenderer will be returned.

The contractor's employee who filed the tender, Hedges, remained for the opening of tenders. Upon learning that the contractor's tender was the lowest out of eight bids and that it was about \$632,000 lower than the next lowest bidder, she immediately reported to the president of the contractor, Vered. What ensued is set out by J. Holland J., the trial Judge, in his judgment:

From her prior experience Hedges felt that there was something radically wrong and wondered if she had made an error ... Hedges went to call Vered after the tender opening — and this would probably be sometime around 3.30 p.m. She says that as soon as she spoke to Vered he said 'We're low. I made a mistake.' This statement was made before she reported on the tenders. She asked if there was anything she could do and was told by Vered 'No — come back to Ottawa'. She never returned to the Ministry office.

.....

Following the opening of tenders the plaintiff forwarded a telex at approximately 4.12 p.m. on July 4, 1972. Exhibit 4, (page 27 of exhibit book) is the copy of this telex and reads as follows:

Today we submitted our tender for the above project and unfortunately due to the rush of compiling our last figures we omitted to add to our total the sum of our own forces work and general condition in the amount of 750,058.00 which actually should have been added to our lump sum tender amount for a total of 3,498,058.00 dollars.

Due to this unfortunate error we would appreciate being given the opportunity to show to you our estimate indicating the error and to hereby request to withdraw our tender and request an apology without being penalized.

The word 'apology' obviously is difficult to understand but there is no doubt about the fact that this was the very word used by Vered as his own copy from his telex in his office contained the exact wording. In any event, this was a '*request* to withdraw the tender without penalty'.

3 In subsequent correspondence and throughout these proceedings the contractor has maintained the position that it has not withdrawn its tender but that by reason of the notice of its error, given to the owner prior to the acceptance of the tender, the offer thereafter was not capable in law of being accepted and that the contractor has the right to recover the \$150,000 deposit. The learned trial Judge concluded with respect to the facts:

- (1) that the tender as filed was as intended to be filed,
- (2) that the procedure leading to the determination of the tender figure, and not the tender itself, was in error. This was the fault of the plaintiff alone,
- (3) there was no error on the face of the tender,
- (4) that the error was learned of after the filing and after the close of time for filing,
- (5) that the error was known to Vered prior to Hedges advising Vered of the results of the tender opening,
- (6) that the plaintiff was diligent in attempting to get in touch with someone to advise of the error and to request the right to withdraw without penalty,
- (7) that the budget prepared by Gore and Storrie Ltd. in the sum of \$2,774,700.00, was an accurate basis for completion by a conscientious contractor, such to include profit. I point out that there was no real attempt to discredit this budget figure.

4 It should be explained that the owner obtained an estimate by its consulting engineers of the cost of the water and sewage treatment plant for which work the tenders were being called. These engineers estimated that the cost of the job, including profit, would be \$2,744,700, some \$3,300 lower than the contractor's tender.

5 The owner, after the receipt of the notice from the contractor of the mistake in the tender, and no doubt responding to the position taken by the contractor that its offer was not revoked by it, submitted to the contractor for signature the construction contract in the form generally prescribed by the tender documents together with the other documents therein called for. The record does not include a blank form of the construction contract, but no issue arose as to the source of the form of contract sent to the contractor, and so it may be assumed said proffered contract complied with the tender documents. The contractor declined to enter into the agreement for the declared reason that it had by mistake submitted a tender which was \$750,058 lower than the contractor intended the bid to be. The owner then took the position, relying upon the tender deposit term quoted above, that it was entitled to retain the tender deposit and proceed to accept the tender posted by the second lowest bidder. This action was then commenced by the contractor to recover the \$150,000 tender deposit. The owner counterclaimed for damages occasioned by the contractor's refusal "to carry out the terms of its tender" and the consequential necessity of accepting the tender of the second lowest bidder. The trial Judge found the owner entitled to retain the tender deposit and dismissed the counterclaim.

6 The core of the submission by the contractor is simply that a mistake by a tenderer, be it patent or latent, renders the tender revocable or the deposit recoverable by the tenderer, notwithstanding the provisions of para. 13 quoted above, so long as notice is given to the owner of the mistake prior to the acceptance by the owner of the contractor's tender. There are subsidiary arguments advanced by the contractor to which I will later make reference.

7 We are not here concerned with a case where the mistake committed by the tendering contractor is apparent on the face of the tender. Rather the mistake here involved is one which requires an explanation outside of the tender documents themselves. The trial Judge has so found and there is evidence in support of that finding. Nor do we have here a case where a trial Court has found impropriety on the part of the contractor such as the attempted recall of an intended, legitimate bid once the contractor has become aware that it is the lowest bidder by a wide margin.

8 The Court of Appeal in reversing the trial Court proceeded on the basis that the owner had not attempted "to signify its acceptance of the tender" but rather relied upon para. 13 of "Information for Tenderers" which I have quoted above. Relying on its decision in *Belle River Community Arena Inc. v. W.J.C. Kaufmann Co.* (1978), 20 O.R. (2d) 447, 4 B.L.R. 231, 87 D.L.R. (3d) 761, decided by the Court of Appeal after the trial judgment herein had been handed down, the Court of Appeal concluded [at p. 334 O.R.] "that an offeree cannot accept an offer which he knows has been made by mistake and which affects a fundamental term of the contract." The Court, speaking through Arnup J.A., continued:

In our view, the principles enunciated in that case ought to be applied in this case. The error in question has been found to be, as it obviously was, material and important. It was drawn to the attention of the Commission almost at once after the opening of tenders. Notwithstanding that, the Commission proceeded as if the error had not been made and on the footing that it was entitled to treat the tender for what it said on its face.

and concluded:

As I said in the course of the argument, a commission or other owner calling for tenders is entitled to be sceptical when a bidder who is the low tenderer by a very substantial amount attempts to say, after the opening of tenders, that a mistake has been made. However, when that mistake is proven by the production of reasonable evidence, the person to whom the tender is made is not in a position to accept the tender or to seek to forfeit the bid deposit.

9 In the *Belle River* case, supra, the contractor purported to withdraw the tender before any action to accept was taken by the owner. In the course of reaching the conclusion that the contractor was entitled to recover his bid bond, Arnup J.A. in that case found that the owner was unable to accept the offer once he became aware that it contained a mistake which affected a fundamental term of the contract. At p. 452 [O.R.] the learned Justice in appeal put it this way:

In substance, the purported offer, because of the mistake, is not the offer the offeror intended to make, and the offeree knows that.

The principle applies even if there is a provision binding the offeror to keep the offer open for acceptance for a given period.

and continuing on pp. 453-54:

In view of the conclusion I have reached as to the inability of the plaintiff to accept the tender, it does not matter, in my opinion, whether the purported tender could be withdrawn, or was in fact withdrawn, before the purported acceptance.

.

If Kaufmann's tender could be withdrawn before acceptance (as occurred in *Hamilton Bd. Ed. case* [*Hamilton Bd. of Educ. v. U.S. Fidelity p; Guar. Co.*, [1960] O.R. 594], then Kaufman's [sic] tender was so withdrawn, and no contract came into existence. If it could not be withdrawn for 60 days, it nevertheless could not be accepted, for the reason already stated, and hence no contract came into existence.

This judgment is the basis for that given by the Court of Appeal in these proceedings.

10 Before us the contractor took the position that, by reason of the fact that the owner did not execute the construction contract before proffering it to the contractor for signature, the owner had not thereby conformed with the quoted portion of para. 13. I find nothing in the "Information for Tenderers" or in any of the tender documents which in any way supports such a position. Indeed, the term of the last part of para. 13, which I have already set out above, read literally would require the tenderer to execute the agreement and associated documents and file them with the owner in order to avoid the retention by the owner of the tender deposit. Clearly on the documentary record the owner called upon the contractor to enter into the construction contract in the manner provided for in the tender documents and the construction contract did not come into being solely by reason of the contractor's refusal to execute the form of contract forwarded to the contractor by the owner.

11 The revocability of the offer must, in my view, be determined in accordance with the "General Conditions" and "Information for Tenderers" and the related documents upon which the tender was submitted. There is no question when one reviews the terms

and conditions under which the tender was made that a contract arose upon the submission of a tender between the contractor and the owner whereby the tenderer could not withdraw the tender for a period of 60 days after the date of the opening of the tenders. Later in these reasons this initial contract is referred to as Contract A to distinguish it from the construction contract itself which would arise on the acceptance of a tender, and which I refer to as Contract B. Other terms and conditions of this unilateral contract which arose by the filing of a tender in response to the call therefor under the aforementioned terms and conditions, included the right to recover the tender deposit 60 days after the opening of tenders if the tender was not accepted by the owner. This contract is brought into being automatically upon the submission of a tender. The terms and conditions specified in the tender documents and which become part of the terms of Contract A between the owner and the contractor included the following provision:

6. Withdrawal or Qualifying of Tenders

A tenderer who has already submitted a tender may submit a further tender at any time up to the official closing time. The last tender received shall supersede and invalidate all tenders previously submitted by that tenderer for this contract.

A tenderer may withdraw or qualify his tender at any time up to the official closing time by submitting a letter bearing his signature and seal as in his tender to the Commission Secretary or his authorized representative in his office who will mark thereon the time and date of receipt and will place the letter in the tender box. No telegrams or telephone calls will be considered.

Paragraph 13, which I have quoted earlier, provides for the return of the tender deposit on the execution of the construction contract and then goes on to provide, and I repeat the applicable portion for emphasis:

Except as otherwise herein provided the tenderer guarantees that if his tender is withdrawn ... of if the Commission does not for any reason receive within the period of seven days ... the Agreement executed by the tenderer ... the Commission may retain the tender deposit. ...

Paragraph 14 is also relevant:

The tenderer agrees that, if requested so to do by the Commission or anyone acting on its behalf within 90 days after the date of opening tenders, he will execute in triplicate and return to the Commission the Agreement in the form found [sic] herein within seven days after being so requested.

Here the contractor expressly avoided employing any terminology indicating a withdrawal of the tender, and indeed affirmatively asserted the position throughout that the offer had not been revoked. The owner did proffer a construction agreement and this agreement was not executed by the tenderer within the seven-day period.

12 It is convenient at this point to dispose of a submission by the contractor that forfeiture of the deposit could occur only if the contractor failed to furnish the performance and payment bonds under para. 12 of the "Information for Tenderers", and since the contractor's obligation thereunder arose only upon the receipt of the construction contract executed by the owner, no right to forfeiture ever arose. Paragraph 12 deals only with the acceptance of a tender by the execution of the construction contract. The paragraph has no relation to payment or retention of deposit moneys. In short, the provision is concerned entirely with the second stage of the contracting procedure, the construction contract, a stage not here reached and with which we are not concerned.

13 We are then left with the bare submission on behalf of the contractor that while the offer was not withdrawn it was not capable of acceptance and that by reason thereof the contractor is entitled to a return of the deposit.

14 I share the view expressed by the Court of Appeal that integrity of the bidding system must be protected where under the law of contracts it is possible so to do. I further share the view expressed by that Court that there may be circumstances where a tender may not be accepted as for example where in law it does not constitute a tender, and hence the bid deposit might not be forfeited. That is so in my view, however, simply because Contract A cannot come into being. It puts it another way to say that the purported tender does not in law amount to an acceptance of the call for tenders and hence the unilateral

contract does not come into existence. Therefore, with the greatest of respect, I diverge from that Court where it is stated in the judgment below [p. 334]:

However, when that mistake is proven by the production of reasonable evidence, the person to whom the tender is made is not in a position to accept the tender or to seek to forfeit the bid deposit.

The test, in my respectful view, must be imposed at the time the tender is submitted and not at some later date after a demonstration by the tenderer of a calculation error. Contract A (being the contract arising forthwith upon the submission of the tender) comes into being forthwith and without further formality upon the submission of the tender. If the tenderer has committed an error in the calculation leading to the tender submitted with the tender deposit, and at least in those circumstances where at that moment the tender is capable of acceptance in law, the rights of the parties under Contract A have thereupon crystallized. The tender deposit, designed to ensure the performance of the obligations of the tenderer under Contract A, must therefore stand exposed to the risk of forfeiture upon the breach of those obligations by the tenderer. Where the conduct of the tenderer might indeed expose him to other claims in damages by the owner, the tender deposit might well be the lesser pain to be suffered by reason of the error in the preparation of the tender. This I will return to later.

15 Much argument was undertaken in this Court on the bearing of the law of mistake on the outcome of this appeal. In approaching the application of the principles of mistake it is imperative here to bear in mind that the only contract up to now in existence between the parties to this appeal is the contract arising on the submission of the tender whereunder the tender is irrevocable during the period of time stipulated in the contract. Contract B (the construction contract, the form of which is set out in the documents relating to the call for tenders) has not and did not come into existence. We are concerned therefore with the law of mistake, if at all, only in connection with Contract A.

16 The tender submitted by the respondent brought Contract A into life. This is sometimes described in law as a unilateral contract, that is to say a contract which results from an act made in response to an offer, as for example in the simplest terms, "I will pay you a dollar if you will cut my lawn." No obligation to cut the lawn exists in law and the obligation to pay the dollar comes into being upon the performance of the invited act. Here the call for tenders created no obligation in the respondent or in anyone else in or out of the construction world. When a member of the construction industry responds to the call for tenders, as the respondent has done here, that response takes the form of the submission of a tender, or a bid as it is sometimes called. The significance of the bid in law is that it at once becomes irrevocable if filed in conformity with the terms and conditions under which the call for tenders was made and if such terms so provide. There is no disagreement between the parties here about the form and procedure in which the tender was submitted by the respondent and that it complied with the terms and conditions of the call for tenders. Consequently, Contract A came into being. The principal term of Contract A is the irrevocability of the bid, and the corollary term is the obligation in both parties to enter into a contract (Contract B) upon the acceptance of the tender. Other terms include the qualified obligations of the owner to accept the lowest tender, and the degree of this obligation is controlled by the terms and conditions established in the call for tenders.

17 The role of the deposit under Contract A is clear and simple. The deposit was required in order to ensure the performance by the contractor-tenderer of its obligations under Contract A. The deposit was recoverable by the contractor under certain conditions, none of which were met; and also was subject to forfeiture under another term of the contract, the provisions of which in my view have been met.

18 There is no question of a mistake on the part of either party up to the moment in time when Contract A came into existence. The employee of the respondent intended to submit the very tender submitted, including the price therein stipulated. Indeed, the president, in instructing the respondent's employee, intended the tender to be as submitted. However, the contractor submits that as the tender was the product of a mistake in calculation, it cannot form the basis of a construction contract since it is not capable of acceptance and hence it cannot be subject to the terms and conditions of Contract A so as to cause a forfeiture thereunder of the deposit. The fallacy in this argument is two-fold. Firstly, there was no mistake in the sense that the contractor did not intend to submit the tender as in form and substance it was. Secondly, there is no principle in law under which the tender was rendered incapable of acceptance by the appellant. For a mutual contract such as Contract B to arise, there must of course be a meeting of the minds, a shared animus contrahendi, but when the contract in question is the product of other contractual arrangements,

different considerations apply. However, as already stated, we never reach that problem here as the rights of the parties fall to be decided according to the tender arrangements, Contract A. At the point when the tender was submitted the owner had not been told about the mistake in calculation. Unlike the case of *McMaster University v. Wilchar Const. Ltd.*, [1971] 3 O.R. 801, 22 D.L.R. (3d) 9, there was nothing on the face of the tender to reveal an error. There was no inference to be drawn by the quantum of the tender (bearing in mind the estimate by Gore and Storrie) that there had indeed been a miscalculation.

19 In the *McMaster University* case, supra, the trial Judge, Thompson J., heard an action for breach of contract in refusing to proceed with the execution of a construction agreement, and the claim by the owner was for damages equal to the difference between the defendant's bid and the next lowest. The Court dismissed the claim finding no obligation on the defendant to conclude a construction contract. Various references are made to the doctrine of mistake but the case appears to have turned upon the fact that the mistake was known to the offeree and therefore the offer could not be accepted and hence the formation of the contract could not occur. In that case the offer mistakenly omitted one page of the tender and the learned trial Judge, at p. 804, stated:

It undoubtedly must have been apparent to Mr. Hedden [employee of the owner], if not to the entire tender committee, that this page was missing from the Wilchar [contractor] tender as delivered.

and again at p. 808:

To me this is patently a case where the offeree, for its own advantage, snapped at the offeror's offer well knowing that the offer as made was made by mistake.

The Court was therefore, in that case, not so much concerned with mistake as with the inability of the parties to comply on the facts with the fundamental rules pertaining to the formation of contracts. There could be no consensus ad idem and hence construction Contract B could not come into being. More important to the issue now before us, the document submitted by the contractor was on its face incomplete and could not in law amount to a tender as required by the conditions established in the call for tenders.

20 It was not seriously advanced that this was a case of patent error in the tender offer and I proceed on the basis that there was not a patent error present.

21 On the facts as found by the learned trial Judge, no mistake existed which impeded or affected the coming into being of Contract A. The "mistake" occurred in the calculations leading to the figures that the contractor admittedly intended to submit in his tender. Therefore, the issue in my view concerns not the law of mistake but the application of the forfeiture provisions contained in the tender documents. The effect a mistake may have on the enforceability or interpretation of a contract subsequently arising is an entirely different question, and one not before us. Neither are we here concerned with a question as to whether a construction contract can arise between parties in the presence of a mutually known error in a tender be it, at least initially, either patent or latent.

22 It might be argued that by some abstract doctrine of law a tender which could not form the basis of a contract upon acceptance in the sense of Contract B, could not operate as a tender to bring into being Contract A. It is unnecessary to consider such a theory because it was not and could not be argued that the tender as actually submitted by the contractor herein was not in law capable of acceptance immediately upon its receipt by the owner, the appellant. There may well be, as I have indicated, a situation in the contemplation of the law where a form of tender was so lacking as not to amount in law to a tender in the sense of the terms and conditions established in the call for tenders, and it may well be that such a form of tender could not be "snapped up" by the owner, as some cases have put it, and therefore it would not operate to trigger the birth of Contract A. Such a situation might arise in the circumstances described in *Fridman, The Law of Contract* (1976), at p. 81:

An offer that is made in error, e.g., as where the offeror intended to say \$200 a ton but wrote \$20 by mistake, may be an offer that cannot be validly accepted by the other party.

The rule in *Foster v. Mackinnon* (1869), L.R. 4 C.P. 704 (vide, Cheshire and Fifoot, *The Law of Contract* (9th ed., 1976), pp. 239-40, for a discussion of the non est factum rule) might also preclude the creation of a contract based upon such an offer. We do not have to decide that question here.

23 Nor are we concerned with the position of the parties where an action is brought upon a refusal to form Contract B as was the case in *McMaster*, supra. It is true that the appellant-owner here has made a counterclaim for damages resulting from the refusal of the respondent to enter into the construction contract but such counterclaim was dismissed and the appeal herein is concerned only with the claim made by the respondent for the return of the tender deposit.

24 Left to itself, therefore, the law of contract would result in a confirmation of a dismissal by the learned trial Judge of the claim by the contractor for the return of the tender deposit. The terms of Contract A, already set out, clearly indicate a contractual right in the owner to forfeit this money.

25 As the respondent has not raised the principle of the law of penalty as it applies to the retention of the deposit here by the appellant, it is not necessary to deal with that branch of the law.

26 The contractor has in this Court and in the Courts below also founded its claim for the return of the tender deposit on the basis that when the owner submitted the construction agreement for execution by the contractor-tenderer, the proffered contract was not signed and left blank the space in the contract form for the completion of the work although the contractor's tender had specified 90 weeks.

27 It should be noted that in the prescribed form of tender the contractor could either insert the time for the completion of the works or, on failing to do so, would be deemed to agree with the construction schedule stipulated by the owner's engineer. J. Holland J. at trial stated with reference to this submission:

I have considered the fact that the time of completion was blank and have concluded that this was purely a clerical error and should not affect the rights and obligations of the parties. I approach this aspect of the case as if the documents as forwarded were in accordance with the tender and include the 90-week period. This is not such a situation as was considered by the Supreme Court of Canada in *Cole v. Sumner* (1900), 30 S.C.R. 379, where the matter in dispute was whether there had been an offer and an acceptance of the offer which was made.

The Court of Appeal was not, of course, called upon to determine this point by reason of its disposition of the case.

28 It would be anomalous indeed if the march forward to a construction contract could be halted by a simple omission to insert in the appropriate blank in the contract the number of weeks already specified by the contractor in its tender. It would be a simple matter for the contractor, in executing the prescribed form after having fixed the contract price and all other terms which were directly dependent upon its tender, to complete the form in accordance with that tender where the proffered contract was inadequate. The contractor was not asked to sign a contract which diverged in any way from its tender but simply to sign a contract in accordance with the instructions to tenderers and in conformity with its own tender. When executing the proffered contract, the contractor was free to insert "ninety weeks" in the blank space in the contract form and indeed to make any other additions or alterations required to bring the contract into conformity with the contractor's tender. I cannot conclude therefore that this omission has any bearing upon the rights of the parties to this appeal and specifically that it stands in the way of the owner in its assertion of its right to retain the tender deposit.

29 For these reasons I would allow the appeal, set aside the order of the Court of Appeal, and restore the judgment of J. Holland J. at trial with costs, here and in all Courts below, to the appellant.

Appeal allowed.

TAB 13

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Murphy v. Alberton \(Town\)](#) | 1993 CarswellPEI 12, 44 A.C.W.S. (3d) 1217, [1993] P.E.I.J. No. 141, 356 A.P.R. 34, 114 Nfld. & P.E.I.R. 34, 14 B.L.R. (2d) 99 | (P.E.I. T.D., Dec 13, 1993)

1993 CarswellOnt 815

Ontario Court of Justice (General Division) [Divisional Court]

Scott Steel (Ottawa) Ltd. v. R.J. Nicol Construction (1975) Ltd.

1993 CarswellOnt 815, [1992] O.J. No. 3005, 10 C.L.R. (2d) 128,

15 C.L.R. (2d) 10 at 24, 15 C.L.R. (2d) 10, 38 A.C.W.S. (3d) 1146

SCOTT STEEL (OTTAWA) LTD. v. R.J. NICOL CONSTRUCTION (1975) LTD.

White, Charron and Greer JJ.

Heard: November 4, 1992

Judgment: March 3, 1993

Docket: Docs. 450/89, 419/93

Counsel: *Robert Morrow*, for appellant.

Justin Fogarty, for respondent.

Subject: Contracts

Related Abridgment Classifications

Construction law

II Contracts

II.1 Building contracts

II.1.a Execution of formal contract

II.1.a.i Tendering process

II.1.a.i.C Relation of subcontractor to contractor

Headnote

Tender — Acceptance of tender — Subcontractor making telephone bid for supply of structural steel — General contractor using bid in its tender — General contractor being awarded contract but deciding to use another subcontractor — Subcontractor suing general contractor — Action dismissed — Subcontractor's tender never accepted by general contractor so as to give rise to contractual obligations between them.

In 1985, the owner proposed the construction of a new school and put out a call for tenders. The defendant, N Ltd., requested quotes for supplying structural steel on the project. The plaintiff and several others provided bids by telephone. N Ltd. used the plaintiff's quotation in the preparation of its tender documents and within 24 hours after submitting its tender provided the owner with a list of its proposed subcontractors. That list included the plaintiff's name. N Ltd. was awarded the general contract and proceeded to award the subcontract to another firm, claiming that the plaintiff could not perform the work according to the required schedule. The plaintiff brought an action against N Ltd. for loss of profits. The trial judge dismissed the action and the plaintiff appealed.

Held:

The appeal was dismissed.

Although the plaintiff and N Ltd. had entered into a contract, the simple fact of N Ltd. having put the plaintiff on its list of proposed subcontractors did not constitute acceptance of the plaintiff's bid. Neither could the subsequent acceptance of N Ltd.'s tender by the owner constitute an acceptance of the plaintiff's tender as between the plaintiff and N Ltd. even if the tender included the plaintiff on its list of subcontractors. The acceptance of N Ltd.'s tender by the owner only affected the rights

between N Ltd. and the owner. It was still open to N Ltd. to change subtrades and obtain the consent of the owner. The plaintiff's tender was never accepted by N Ltd. so as to give rise to contractual obligations between the two of them.

Table of Authorities

Cases considered:

Bate Equipment Ltd. v. Ellis-Don Ltd. (1992), 2 C.L.R. (2d) 157, 132 A.R. 161 (Q.B.) — *applied*

M.S.K. Financial Services Ltd. v. Alberta (1987), 23 C.L.R. 172, (sub nom. *M.S.K. Financial Services Ltd. v. Alberta (Minister of Public Works, Supply & Services)*) 77 A.R. 362 (Master) — *considered*

Moncton Plumbing & Supply Co. v. Brunswick Construction Ltd. (1985), 13 C.L.R. 52, 62 N.B.R. (2d) 98, 161 A.P.R. 98 (C.A.) — *considered*

Northern Construction Co. v. Gloge Heating & Plumbing Ltd., 5 C.L.R. 212, [1984] 3 W.W.R. 63, 30 Alta. L.R. (2d) 1, 52 A.R. 54, 6 D.L.R. (4th) 450 (Q.B.), affirmed 19 C.L.R. 281, 42 Alta. L.R. (2d) 326, [1986] 2 W.W.R. 649, 67 A.R. 150, 27 D.L.R. (4th) 264, 32 B.L.R. 142 (C.A.) — *considered*

Peddlesden Ltd. v. Liddell Construction Ltd. (1981), 32 B.C.L.R. 392, (sub nom. *M.J. Peddlesden Ltd. v. Liddell Construction Ltd.*) 128 D.L.R. (3d) 360 (S.C.) — *considered*

R. v. Ron Engineering & Construction (Eastern) Ltd. (March 14, 1978), J. Holland J. (Ont. H.C.) [reversed (1979), 24 O.R. (2d) 332, 35 N.R. 55, 98 D.L.R. (3d) 548 (C.A.), reversed [1981] 1 S.C.R. 111, 13 B.L.R. 72, (sub nom. *Ron Engineering & Construction (Eastern) Ltd. v. Ontario*)] 35 N.R. 40, 119 D.L.R. (3d) 267] — *referred to*

R. v. Ron Engineering & Construction (Eastern) Ltd. (1979), 24 O.R. (2d) 332, 35 N.R. 55, 98 D.L.R. (3d) 548 (C.A.) [reversed [1981] 1 S.C.R. 111, 13 B.L.R. 72, (sub nom. *Ron Engineering & Construction (Eastrn) Ltd. v. Ontario*) 35 N.R. 40, 119 D.L.R. (3d) 267] — *considered*

R. v. Ron Engineering & Construction (Eastern) Ltd., [1981] 1 S.C.R. 111, 13 B.L.R. 72, (sub nom. *Ron Engineering & Construction (Eastern) Ltd. v. Ontario*) 35 N.R. 40, 119 D.L.R. (3d) 267 — *followed*

Appeal from dismissal of action against general contractor who refused to use subcontractor's services.

The judgment of the court was delivered by Charron J.:

1 The appellant Scott Steel (Ottawa) Ltd. ("Scott") appeals from the dismissal of his action for breach of contract against the respondent R.J. Nicol Construction (1975) Ltd. ("Nicol"). The narrow issue to be determined on this appeal is whether a binding contract was formed between the parties during the following bidding process: Scott, as proposed sub-contractor, made a telephone bid for the supply of structural steel on a project for which Nicol proposed to tender as general contractor; Nicol used Scott's bid in its tender to the Carleton Board of Education ("the Owner") and was awarded the contract. Despite having named Scott as its proposed sub-contractor for structural steel in its tender documents, Nicol subsequently awarded the sub-contract to another firm. The appellant claimed the loss of profits he would have made had he been awarded the contract. The trial judge found that no contract had been formed between the parties and dismissed the action.

2 While no appeal is taken from any findings of fact made at trial, the appellant maintains that the trial judge erred when he distinguished this case from *R. v. Ron Engineering & Construction (Eastern) Ltd.* (1981), 119 D.L.R. (3d) 267 (S.C.C.) and refused to give effect to the legal consequences flowing from the bidding process between the parties in accordance with the principles established by the Supreme Court of Canada.

The Facts

3 In 1985, the Carleton Board of Education proposed the construction of a new school and had its architects prepare the plans, tender documents and specifications required for the project. Contractors were invited to bid on the project as well as subcontractors for electrical, mechanical, drywall and acoustic. These bids were coordinated through the Ottawa Valley Bid Depository. A Standard Construction Document was part of the Contract Documents and it contained the following provisions with respect to subcontractors:

Definitions

6. Subcontractor

A Subcontractor is a person, firm or corporation having a direct contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked. The terms Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender.

.....

10.1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract and to:

- (a) enter into contracts or written agreements with his Subcontractors to require them to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and
- (b) be as fully responsible to the Owner for acts and omissions of his Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

The Contractor therefore agrees that he will incorporate the terms and conditions of the Contract Documents into all subcontract agreements he enters into with his Subcontractors.

10.2 The Contractor agrees to employ those Subcontractors proposed by him in writing and accepted by the Owner at the signing of the Contract.

10.3 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to employ one of the other subcontract bidders.

10.4 In the event that the Owner requires a change from a proposed Subcontractor the Contract Price shall be adjusted by the difference in cost and mark-up occasioned by such required change.

10.5 The Contractor shall not be required to employ as a Subcontractor a person or firm to whom he may reasonably object.

10.6 The Consultant may, upon reasonable request and at his discretion, provide to a Subcontractor information as to the percentage or quantity of the Subcontractor's work which has been certified for payment.

10.7 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.

10.8 All subcontracts shall be awarded by the contractor within thirty (30) days after a contract has been awarded to the contractor.

4 The Instructions to Tenderers identified the work to be done and stipulated that it was anticipated that construction would begin in late November 1985 for completion in August 1986 to ensure school occupancy in September 1986. Any tenders submitted could be withdrawn at any time prior to the closing time for the receipt of tenders set at 1:00 p.m. on Thursday November 7, 1985. Every tender had to be accompanied by a bid security deposit in an amount of not less than 10% of the tender sum either by certified cheque or by bid bond for a period of 45 days. The security deposit was to be returned within a reasonable time to all except the successful tenderer whose deposit was to be retained until performance and payment bonds were submitted and the contract signed. The Instructions to Tenderers specified that the lowest or any tender shall not necessarily be accepted. The following provisions were made with respect to subcontractors:

12. List of subcontractors

- .1 Within 24-hours of tender closing, the tenderer shall submit to the Architect, Section 00430 List of Subcontractors, identifying the name of each proposed subcontractor used in making up his tender, stating the portion of work

allocated to each and duly signed and sealed. Only one subcontractor to be named for each part of work to be sublet. Noncompliance may void tender.

.2 The contractor will not be allowed to substitute other subcontractors in place of those named in his tender without written approval from the architect.

.3 Where terms such as "Own Forces" are used, submission must include documented evidence that he possesses the staff, equipment, and skills to undertake such work.

.4 The Owner reserves the right of refusal on any subcontractor.

5 Prior to November 7th, Nicol had requested the plaintiff to provide a bid and quotation for supplying the structural steel on the project. Scott and several others provided bids by telephone. Nicol used Scott's quotation in the preparation of its tender documents and within 24 hours after submitting its tender provided the Owner with a list of its proposed subcontractors as required in the Instructions to Tenderers including Scott for structural steel, joist and deck. The preamble to the list of subcontractors stipulated: "We agree that this list may only be changed in accordance with General Condition 10 and relevant Supplementary Conditions of the Contract."

6 Nicol was awarded the general contract. Following some further negotiations with Scott, Nicol awarded the subcontract to another firm claiming that Scott could not perform the work according to the required schedule.

7 The trial judge made the following findings of fact:

I find that there is no evidence of bid shopping; rather it would appear that the contrary is true by the fact that the general contractor paid \$7,800 more for the services of the subcontractor, Trenton. Nor do I find that there was a promise made by the general contractor that Trenton would get the contract or do I find any other improper motive on the part of the defendant for not proceeding with the plaintiff as subcontractor. I do find that the scheduling of the project was of the utmost importance and the timing of the fabricating and erection of the structural steel was crucial to a timely completion of the project. I further find that the plaintiff was relatively new in the business and that the defendant found the plaintiff's attitude and schedule unacceptable.

I find that notwithstanding the bid of the plaintiff to the defendant and the inclusion of the name of the plaintiff in the defendant's tender to the owner that no contract was created between the subcontractor and the general contractor upon acceptance of the tender of the defendant by the owner, for the following reasons:

(1) The bid by the subcontractor was not complete as it did not properly set out the scheduling and although some attempts were subsequently made to reach agreement, they were not successful and they, in my opinion, were only carried on in the hopes of arriving at a basis for a contract.

Further I am of the opinion that inclusion of articles 12.2 and 12.4 of the Instructions to Tender enforced the view that the mere submission of a bid by a subcontractor to a contractor does not create a contract upon acceptance of the main tender by the owner. The position that there is no contract upon the above events taking place is further fortified by the preamble to the list of subcontractors in Item 11 of the tender and the provisions of Section 10.2, 10.3 and 10.5 of Exhibit 4.

On the evidence produced by the plaintiff itself, I find that the plaintiff submitted a bid by telephone on November 7th to the defendant, and subsequently they determined that the defendant had been awarded the contract. The plaintiffs assumed that they got the job because they were named in the defendant's tender, but the plaintiff also admitted that the lowest tender would not necessarily get the job. They also admitted that they knew that subcontractors could be changed. They were also aware that timing of the project was crucial, and they admitted that the project couldn't be completed by the end of August if the structural steel work was completed in accordance with their schedule on July 11th. The evidence on behalf of the plaintiffs also acknowledge that if the terms could not be worked out between the general contractor and the subcontractor, there would be no contract. It was also admitted that there was no real list of criteria for changing subcontractors.

With respect to the evidence led by the defense, although it was somewhat less than satisfactory, if standing alone, it in effect confirms in to a great extent what already had been stated by the plaintiff's witnesses.

Case Law

8 Prior to the Supreme Court of Canada decision in *Ron Engineering, supra*, the determination of bidders' rights generally proceeded on the assumption that a call for tenders was but an invitation to treat and a tender was an offer which could result in a contract only upon its acceptance. If that were still the state of the law, the appellant concedes that it would have no claim. But the Supreme Court of Canada made it clear in *Ron Engineering* that, in appropriate circumstances, a call for tenders can constitute an offer and the submission of a tender in accordance with its terms can constitute an acceptance giving rise to a contractual relationship. The terms of the resulting contract can then be determined from the tender documents.

9 It is important to consider the facts in *Ron Engineering* in order to understand its application. Under the general conditions applicable to the call for tenders, the owner issued documentation entitled "Information for Tenderers" which stated in part [p. 268]:

Except as otherwise herein provided the tenderer guarantees that if his tender is withdrawn before the Commission shall have considered the tenders or before or after he has been notified that his tender has been recommended to the Commission for acceptance or that if the Commission does not for any reason receive within the period of seven days as stipulated and as required herein, the Agreement executed by the tenderer, the Performance Bond and the Payment Bond executed by the tenderer and the surety company and the other documents required herein, the Commission may retain the tender deposit for the use of the Commission and may accept any tender, advertise for new tenders, negotiate a contract or not accept any tender as the Commission may deem advisable.

10 Ron Engineering submitted a bid accompanied by a certified cheque in the amount of \$150,000 as bid security. Upon the opening of bids, it became apparent that Ron Engineering's bid in the amount of \$2,748,000 was \$632,000 below the second bid. This led Ron Engineering to promptly review its bid and discover that the estimator had failed to add the sum calculated for Ron Engineering's own work force in an amount exceeding \$750,000. Within an hour and a half of the opening of the bids, Ron Engineering advised the owner of its error and requested to withdraw its bid. The request was refused. Ron Engineering refused to sign a contract and the owner let the contract to another bidder. Ron Engineering then commenced an action against the owner for the return of its bid deposit of \$150,000; the owner counterclaimed for the additional cost to which it was put by engaging others to perform the work.

11 At trial, both the claim and counterclaim were dismissed. The contractor appealed. The Ontario Court of Appeal ordered the return of the deposit. The Court relied on one of its prior decisions and concluded that since the error in question was fundamental and was known to the owner before acceptance of the tender, it could not found the basis for an enforceable claim in contract. Since the tender could not be accepted, the bid security could not be forfeited.

12 The owner appealed to the Supreme Court of Canada. In writing for the Court, Estey J. stated as follows at p. 272:

The revocability of the offer must, in my view, be determined in accordance with the "General Conditions" and "Information for Tenderers" and the related documents upon which the tender was submitted. There is no question when one reviews the terms and conditions under which the tender was made that a contract arose upon the submission of a tender between the contractor and the owner whereby the tenderer could not withdraw the tender for a period of 60 days after the date of the opening of the tenders. Later in these reasons this initial contract is referred to as contract "A" to distinguish it from the construction contract itself which would arise on the acceptance of a tender, and which I refer to as contract "B". Other terms and conditions of this unilateral contract which arose by the filing of a tender in response to the call therefor under the aforementioned terms and conditions, included the right to recover the tender deposit 60 days after the opening of tenders if the tender was not accepted by the owner. This contract is brought into being automatically upon the submission of a tender.

And later at pp. 274-5:

The tender submitted by the respondent brought contract A into life. This is sometimes described in law as a unilateral contract, that is to say a contract which results from an act made in response to an offer, as for example in the simplest terms, "I will pay you a dollar if you will cut my lawn." No obligation to cut the lawn exists in law and the obligation to pay the dollar comes into being upon the performance of the invited act. Here the call for tenders created no obligation in the respondent or in anyone else in or out of the construction world. When a member of the construction industry responds to the call for tenders, as the respondent has done here, that response takes the form of the submission of a tender, or a bid as it is sometimes called. The significance of the bid in law is that it at once becomes irrevocable if filed in conformity with the terms and conditions under which the call for tenders was made and if such terms so provide. There is no disagreement between the parties here about the form and procedure in which the tender was submitted by the respondent and that it complied with the terms and conditions of the call for tenders. Consequently, contract A came into being. The principal term of contract A is the irrevocability of the bid, and the corollary term is the obligation in both parties to enter into a contract (contract B) upon the acceptance of the tender. Other terms include the qualified obligations of the owner to accept the lowest tender, and the degree of this obligation is controlled by the terms and conditions established in the call for tenders.

13 Hence, on the facts in *Ron Engineering*, the call for bids was an offer and the tender in accordance with its terms was an acceptance. At that time, a contract was formed whether there had been an error in the bid or not. According to the terms of this contract, the deposit was forfeited if the tenderer failed to enter into a contract for the performance of the work following acceptance of its tender. Estey J. made it clear that he was not dealing with the effect a mistake would have on the creation of the subsequent contract B when he stated at p. 275:

For a mutual contract such as contract B to arise, there must of course be a meeting of the minds, a shared *animus contrahendi*, but when the contract in question is the product of other contractual arrangements, different considerations apply.

He recognized that there might be situations where a contract would not arise upon the submission of a tender in answer to a call for tenders when he stated at p. 277:

There may well be, as I have indicated, a situation in the contemplation of the law where a form of tender was so lacking as not to amount in law to a tender in the sense of the terms and conditions established in the call for tenders, and it may well be that such a form of tender could not be "snapped up" by the owner, as some cases have put it, and therefore it would not operate to trigger the birth of contract A.

14 In the same way, there may be situations where the form of the call for bids may be so lacking in terms and conditions as to not amount to an offer capable of acceptance and leading to a contract. In the case at bar, there is no evidence that Nicol's call for bids to subcontractors contained any particular terms and conditions and no terms other than the price were stipulated by Scott in its telephone bid. When the actual bidding process which took place between the parties is considered in isolation, it is difficult to see how it could have been sufficiently precise and certain to give rise to a binding contract. The appellant argues however that all relevant terms and conditions were set out in the call for tenders put out by the owner and that these should be implied in the bidding process as between Nicol and Scott since Nicol's call for bids and Scott's responding telephone bid were obviously done with the knowledge of the specifications of the owner's project and solely in its context.

15 The applicability of the principles in *Ron Engineering* in the context of subtrade bidding has been considered in some cases. The appellant relies mainly on *Peddlesden Ltd. v. Liddell Construction Ltd.* (1981), 128 D.L.R. (3d) 360 (B.C. S.C.) and urges this Court to adopt the same approach. Liddell was a general contractor bidding to an owner for the construction of a school. Peddlesden was a masonry subtrade. The tenders were submitted through a bid depository which provided for trade contractors to submit sealed tenders for consideration by general contractors in preparation of their own bids. The rules of procedure of the bid depository stipulated as follows [p. 361]:

The bid depository is a system for the reception of sealed tenders from trade contractors, and other bidders if designated, to ensure the sanctity of bidding and to enable those receiving their tenders to obtain firm quotations in writing and in

adequate time to compile their bids completely and accurately, all of which is in the best interest of owners, designers and contractors.

Through the bid depository system, Peddlesden's bid was made subject to acceptance within 30 days and was therefore irrevocable for that period. Liddell used the price submitted by Peddlesden in preparing its bid to the owner and listed it as its subcontractor. Liddell was awarded the contract to construct the school within the thirty days following the submission of Peddlesden's bid through the depository but Liddell did not communicate its acceptance of Peddlesden's bid until after the thirty day period of irrevocability had expired. Liddell then performed the work with other forces and Peddlesden sought to recover damages for the loss it sustained as a result of not being awarded the contract.

16 Ruttan J. adopted the reasoning in *Ron Engineering* and stated at pp. 362-4:

The bid of the plaintiff upon reaching the contractor had the force and effect of a unilateral contract, binding on the plaintiff for the stated period, and binding also on the contractor, once the bid was adopted and made part of its tender, but subject further to the acceptance of this general tender by the owner.

.....
Mr. Justice Estey there was dealing as I say with only one tender, directed to the owner, but the *dicta* applies with equal validity to the first tender from the trade contractor to the general contractor. A binding unilateral contract is there created, with two further requirements to make it binding on the general contractor: (1) the owner must accept, and (2) that acceptance must be made within the 30-day period. That acceptance binds the owner, binds the general contractor, and of course continues to bind the subcontractor. Whether or not the subcontractor is notified within the 30-day period, is not a condition precedent. It is the act of acceptance which binds, not notification to him.

Thus while communication of the acceptance is normally required to make a binding contract between the parties, in tender contracts such as this one, the subtrade offerer, is aware that his offer to his general contractor has been accepted by him and that it is binding on them both subject only to the further acceptance by the owner. The subcontractor cannot withdraw within that period, and it is not necessary to inform him within the 30 days that the contract has been accepted. It is the acceptance within the 30 days, not the subsequent communication of acceptance that creates the binding contract.

Counsel for the defendant also raised the issue that acceptance in the present case does not create a contract, since there remained many details to work out and a further construction contract was required to spell out the conduct of the job.

However, there is no evidence that there was anything unusual in this job, and the situation was like that stated in *Hudson's Building & Engineering Contracts*, 10th ed. (1970), c. 3, at p. 216, where he said:

When the employer accepts the builder's tender, and the fact is notified to the builder, the parties usually consider themselves bound, and frequently work is commenced by the builder on this assumption.

There is no suggestion in the evidence in this case that legal relationships between these parties were conditional upon further negotiations and a more formal contract being entered into.

17 While I would agree that the principles established in *Ron Engineering* are equally valid to the bidding process as between the trades and the general contractor as it is between the latter and the owner, I see no reason why the normal rules relating to acceptance should be departed from as was done in *Peddlesden*. While it is important to maintain the sanctity of the bidding process to establish rules which will enable the general contractor to rely on quotes made to him by subtrades since he in turn agrees to bind himself to the performance of those terms vis-à-vis the owner, nothing in the bidding process would be affected if the contractor was not bound in a contractual relationship with the subtrade unless and until he himself has the contract with the owner and he subsequently communicates his acceptance of the subcontractor's bid. *Ron Engineering* has clearly stated that "Contract A" which may arise as a result of the submission of a tender in response to a call for tenders is a *unilateral* contract only. By its terms, the submission for tender becomes irrevocable for a certain period of time and the tenderer may be obligated to enter into a contract to perform work, Contract B, if the tender is accepted. But the contractor who receives the tender is under no obligation to accept it or to enter into the subsequent Contract B unless he accepts the tender *and communicates this*

acceptance to the tenderer in accordance with the usual rules of contract law. In my view, nothing is safeguarded by creating new "deemed acceptance rules" as was done in *Peddlesden*. On this point, I agree with the reasoning of Dea J. of the Alberta Queen's Bench in *Bate Equipment Ltd. v. Ellis-Don Ltd.*, an unreported decision dated July 21, 1992 [reported 2 C.L.R. (2d) 157] wherein he disagreed with the proposition established in *Peddlesden*. He concludes his analysis of that case and other relevant jurisprudence by stating at p. 19 [p. 170]: "In my view, there is no compelling authority that the mere fact of carrying the sub-contractor's name and bid constitutes an acceptance, conditional or otherwise, of the bid."

18 The distinction between the rights of the tenderer and the tenderer under the unilateral contract A has also been recognized in *M.S.K. Financial Services Ltd. v. Alberta* (1987), 23 C.L.R. 172 (Alta. Master). In that case, the plaintiff submitted the lowest bid to the defendant Crown in respect of a tender for property management services. The Instructions to Bidders specified that certain qualifications had to be met by bidders before they would be eligible to submit a tender. A further provision stated that the lowest or any tender would not necessarily be accepted and that the Minister reserved the right to reject any and all tenders. The defendant accepted a tender from a bidder who did not meet the qualifications and who was not the lowest bidder. The plaintiff claimed loss of profit and management fees arguing that a contract A had been formed between the parties and that he had been deprived of the right to enter into contract B. The plaintiff cited *Ron Engineering* and like cases in support. The Master stated at p. 178:

Counsel for the plaintiff submits that there was a contract A between the plaintiff and the defendant. That may be. However, the damages claimed by the plaintiff are the "loss of profit" it says it suffered because it did not get a contract B.

The decisions cited are of no assistance to the plaintiff's position. They all deal with the liabilities of a bidder (and the corresponding rights of the owner) under a contract A. This action is the reverse situation. The decisions in question cannot be simply flipped over for some automatic proposition that the owner is liable to a bidder if he, the owner, does not enter into a contract B with the bidder.

19 The Master reviews relevant passages of *Ron Engineering* and states at p. 179:

It is clear from that that if the owner accepts a bid both parties are obligated to enter into a contract B. However, it does not necessarily follow that the owner is obliged to accept any particular bid and enter into a contract B. Such an obligation on the part of an owner would exist only if the terms of contract A required the owner to accept a particular bid.

20 If it can be said that a contract A was formed upon Scott making his telephone bid to Nicol and that the Instructions to Tenderers put out by the Owner were implied terms of this contract, there is nothing in the terms of such Contract A which would require Nicol to accept Scott's bid or any bid. Such obligation could only arise upon proper acceptance and communication of acceptance of Scott's bid.

21 The applicability of *Ron Engineering* to the subtrade process was also dealt with in *Northern Construction Co. v. Gloge Heating & Plumbing Ltd.* (1984), 5 C.L.R. 212 (Alta Q.B.), aff'd (1986), 19 C.L.R. 281 (Alta C.A.). The decision expresses well the policy considerations at play. In this case Northern as general contractor sought bids from various mechanical subtrades including the defendant Gloge. Shortly before the closing of the general contractor's tenders, Gloge submitted a telephone bid to Northern. Northern used Gloge's price in its tender and listed Gloge as its mechanical trade in its bid. Northern was low bidder and Gloge became aware of this. Gloge noticed an arithmetical error in his bid and so advised Northern before there was any formal acceptance of Gloge's bid by Northern.

22 It is relevant to note that, as in this case, Gloge's bid was over the telephone and not submitted through a bid depository. Expert evidence was called on behalf of Northern to outline what they understood was the established practice in the construction industry in Alberta relating to telephone bids and their acceptance. The expert evidence established that where no bid depository system was used, it was common practice for subtrades to submit bids by telephone at the last minute and for general contractors to receive same. It was clearly understood at all times that the bidder meant to be bound by the telephone bid and that the contractor could rely upon it in building up his own tender unless it was withdrawn prior to the close of tenders on the general contract.

23 The Alberta Court of Appeal relied on the case of *Ron Engineering* and stated at pp. 285-6:

Was Gloge's tender revocable after close of tender? Gloge knew that Northern would select a mechanical tender and rely on it, and Gloge also knew that the tenders of the general contractors to the owner would be irrevocable for the time set out in the contract documents. Perhaps these facts of themselves might justify holding the Gloge tender to be irrevocable. But, in addition, the trial Judge accepted certain expert evidence given at the trial by two witnesses who had been in the construction industry for many years. That evidence demonstrated that it was normal and standard practice for general contractors to accept last-minute telephone tenders from subcontractors, and that it was understood and accepted by those in the industry that while such tenders could be withdrawn prior to close of tendering, if not so withdrawn, that such tenders must remain irrevocable for the same term that the general contractors' tenders to the owner are irrevocable.

This industry practice is eminent common sense. Without such accepted practice the tendering system would become unenforceable and meaningless. Estey J. observed in *Ron Engineering*: "I share the view expressed by the Court of Appeal that the integrity of the bidding system must be protected where under the law of contracts it is possible so to do". [p. 121]

Applying the industry practice to this case, Gloge could not withdraw its tender to Northern after tenders had closed, and its tender was irrevocable for the same period as Northern's. Accordingly Gloge was obligated to perform the work when Northern awarded it the subcontract, and is liable for failing to do so.

24 In *Moncton Plumbing & Supply Co. v. Brunswick Construction Ltd.* (1985), 13 C.L.R. 52 (N.B. C.A.), the general contractor was found in breach of contract A when it purported to do the work himself after having used the plaintiff subtrade's bid in its tender to the Owner and naming the plaintiff as his subtrade. However the case is clearly distinguishable from the present as the terms of contract A obligated the contractor to enter into contract B with the plaintiff. The Court found that the contractor, in availing itself of the bid depository system, as obligated by the owner, was required to abide by the rules of the system. Those rules provided that a contractor was bound to place a subcontract with one of the bidding subtrades who bid through the bid depository system and, if only one bid was received, with that subtrade. The plaintiff was the only bidding subtrade. Once the contractor's tender to the owner was accepted, he was bound to give the subcontract to the plaintiff.

25 In this case, the trial judge erred in finding that no contract A was formed between the parties. In my view, the principles in *Ron Engineering* should apply in a situation such as this one. When Scott telephoned its bid to Nicol he was doing so in accordance with the specifications and requirements set out by the Owner and known to both parties. Scott knew that Nicol could well rely on this bid in the preparation of its own tender and that Scott could therefore bind itself vis-à-vis the Owner to perform that portion of the contract in accordance with the terms of Scott's bid. It is only reasonable to conclude that the parties intended Scott's bid to remain irrevocable for the same 45 days as Nicol's tender to the Owner would be. At that point in time, Contract A was formed. However, the contract was unilateral in nature and did not impose any obligations on Scott to accept this bid or to enter into contract B. Nicol would only be liable to enter into contract B if and when it accepted Scott's bid and communicated this acceptance to Scott. The simple fact of putting Scott on its list of *proposed* subcontractors cannot constitute such an acceptance unless a term of this Contract A so provided. There was no such term in this case. Neither can the subsequent acceptance of Nicol's tender by the Owner constitute an acceptance of Scott's tender as between Scott and Nicol even if the tender includes Scott on its list of subcontractors. The acceptance of Nicol's tender by the Owner only affected the rights between Nicol and the Owner. It was still open to Nicol to change subtrades and obtain the consent of the Owner. Scott's tender was never accepted by Nicol so as to give rise to contractual obligations between the two of them.

26 The appeal is dismissed with costs to the respondent in the amount of \$6500. The quantum of costs was agreed to between the parties and includes the costs of this appeal and the costs of the parties' appearance in the Court of Appeal.

Greer J. (dissenting):

27 I have reviewed the reasons of Charron J., with which White J. has concurred, and with respect, I disagree with their conclusion. I am of the opinion that there was acceptance by R.J. Nicol Construction (1975) Ltd. ("Nicol") of the contract with

Scott Steel (Ottawa) Ltd. ("Scott"), when Nicol included the name of Scott on its tender documents submitted to the school Board (the "owner"), and it received the letter of intent from the owner's architects.

1. Additional Factual Material

28 While I agree with the facts as set out in the majority decision, there are additional facts which I am of the view are relevant to the principles as set out in *R. v. Ron Engineering & Construction (Eastern) Ltd.* (1981), 119 D.L.R. (3d) 267 (S.C.C.). Firstly, it is important to examine the wording of the contract document, which is entitled "Supplementary Conditions." Under the heading "GC 10 Subcontractors", paragraph 1 reads as follows:

.1 Add para. 10.8: "All subcontracts shall be awarded by the contractor within thirty (30) days after the contract has been awarded to the contractor."

In the Instructions to Tenderers, paragraph 4.3 states: "Tenders to be delivered not later than 1:00 p.m. local time on THURSDAY, 7 NOVEMBER 1985." Thus, Nicol had an obligation to award all its subcontracts within 30 days after it received notice that it was the successful bidder. Under paragraph 12, it had 24 hours after the tender closed to submit to the architect, the Section 00430 List of Subcontractors identifying the name of each proposed subcontractor used in making up its tender, stating the portion of work allocated to each. This document was to be duly signed and sealed. Only one subcontractor was to be named for each part of the work to be sublet. Noncompliance with this could void the tender.

29 Once the names of the subcontractors had been submitted, under the terms of paragraph 12.2, the contractor was not allowed to substitute other subcontractors in place of those named in its tender, "without written approval from the architect." This mandatory stipulation seems to me to be in place in order to prevent exactly what did happen in the case at bar. In addition, paragraph 10.3 gave the owner the right to object to the use of a proposed subcontractor, "for reasonable cause." None of the documents gives the contractor the unilateral right to change the subcontractor.

30 Nicol complied with its obligation to provide the names of the subcontractors within the 24-hour period. The document headed "List of Subcontractors" states as follows:

Herewith is the list of Subcontractors referred to in Item 11 of the Tender submitted by: R.J. Nicol Construction (1975) Ltd.

To the Carleton Board of Education for Orleans South Elementary School.

dated November 7, 1985 and *which is an integral part of the above noted Tender*. I/We agree that this list may only be changed in accordance with General Condition 10 and relevant Supplementary Conditions of the Contract. (Emphasis added)

The name of Scott Steel appears as subcontractor after the words "Structural Steel, Joists and Deck." Scott's price in the tender was \$584,300. The words found under the heading "List of Subcontractors" state that the list is an "integral part of the Tender."

31 Trenton, which eventually became the de facto subcontractor, had submitted a bid which was higher than that of Scott. It is interesting to note that on an in-house memo to R.J. Nicol from F. Regalbuto dated December 17, 1985, he recommends that the contract be awarded to Trenton for an amount of \$580,000, but then on the Budget Code line, includes structural steel 5A at \$584,300 plus 5B, of \$25,700 for a total of \$610,000. There is also an indication on the memo that Trenton would receive another small contract noted as "5C". In other documentation, it is clear there were to be no "additions" to any of the tender prices. Trenton, notwithstanding, was eventually accepted as the subcontractor with an "addition" to its tender price, after Scott was informed it was not to be the subcontractor.

32 Scott was not put on notice that its subcontract was being rejected until January 20, 1986, when Mr. Regalbuto, the project manager, wrote to Scott and stated that they had reviewed in "great depth and detail," its Drawing, Engineering, Fabrication and Erection Schedule submitted on January 15, 1986. It found that Scott's schedule and work-up was "several weeks later than two of the other competitive bidders on the project" and in light of the "fast-track requirements for this project," it had "no option" but to award the contract on the basis of delivery rather than price.

33 Interestingly enough, it is quite clear from the Trial Record that Scott made every effort to communicate early on with Nicol after the tender closed. Scott's employees left a total of 12 messages between December 16, 1985 and January 13, 1986 for Nicol to return their calls, but none was returned. A month and a half had passed since Scott's name was submitted on the tender. Time did not appear to be of the essence to Nicol, even though Nicol was quite aware from paragraph 1.3 of the Instructions to Tenderers, that it was anticipated that construction would, "begin in late November 1985, for completion in August 1986 to ensure school occupancy in September 1986." The actual letter of intent was sent to Nicol by the owner's architects on December 16, 1985, after it had studied the proposed subcontractors during the "tender verification period between November 8, 1985 and December 16, 1985." The actual formal contract was subsequently executed on February 5, 1986.

34 Scott would be aware of all of the tender information and would bid on the same basis as Nicol did as the general contractor. When Scott submitted its price to Nicol, it was obliged to hold to its price as per the tender, and hence for the tender verification period. Scott's calls to Nicol appear to have begun when the tender verification period was over.

35 It is important to note that neither the architect nor the owner ever gave written approval for the substitution by Nicol of Trenton Machine Tool for that of Scott. The architect, in fact, outright rejected the substitution. Eventually, Nicol ended up absorbing the difference between the bid prices.

36 If a subcontractor was to be changed, the general contractor would do so if financial inability was shown by the subcontractor or if there was a disagreement on the scope of the work. Given the nature of the way the bidding system operated, the subcontractor tendering would have been aware of the scheduling required and would have known the approximate date required for completion. Why would the general contractor name the subcontractor if the subcontractor did not have an initial understanding of what was taking place? Why would the owner have insisted in the documentation that the name of the subcontractor be inserted on which the general contractor was relying? It seems to me that the integrity of the whole bid system would be impeached by not applying, in the circumstances of this case, the principles as set out in *Ron Engineering* and the cases which followed its extension to include subcontractors.

37 During the tendering process, Scott was never called upon to give a specific schedule nor was it ever asked to tender its subcontract bid terms in that fashion. Although the document in Nicol's hands stated that construction would begin in late November, the school board and Nicol must have been aware that it had obtained no building permit to have construction begin at that date. As of the end of January 1986, no building permit had yet been issued, and it was not clear on the facts before us as to the exact date of its issue. Therefore, if Scott had been put on notice immediately on December 16, 1985, after the tender verification had been completed, it would have been able to produce the steel within the given time-frame, since in the end, the project was not completed until late November or early December, 1986.

38 It is quite clear that the architects involved in the project thought that the steps taken by Nicol with respect to the bid by Scott were a breach of contract. In its letter to the Carleton Board of Education dated January 20, 1986 it states: "This list was reviewed, discussed with the contractor, and subsequently approved. In particular, the credentials of Scott Steel were confirmed as acceptable." Further on p. 2 of that letter, the architects state:

We have requested, but not received, a copy of the contract Nicol indicates he has signed with Trenton Machine Tool. In addition, it would appear, Trenton did not tender the project to other contractors bidding the project on 7 November 1985.

On the basis of this information, it is our opinion, a substitution for the named low bidder, in the supply and erection of structural steel for the school, is without apparent cause and represents a breach (sic) of contract.

2. Ron Engineering

39 I have concluded that the case of *Ron Engineering* and its extension applies to the case at bar. The principles, in my view, can apply equally to a case of a bid by a subcontractor as to that of a general contractor.

40 Using the *Ron Engineering* hypothetical, Contract A was in my view a unilateral contract, and a function of the call of the bid received. Its acceptance arises when the subcontractor's name is inserted on the list submitted to the architect, and the owner accepts the contractor's bid. In the case of *Megatech Contracting Ltd. v. Ottawa-Carleton (Regional Municipality)* (1989), 68 O.R. (2d) 503 (H.C.), Maloney J. held the following at p. 507:

I agree with the defendant's analysis and application of the *Ron Engineering* case to the facts herein. In my view, *Ron Engineering* must be understood to stand for the proposition that contract A, based on the irrevocable bid of the successful tenderer, arises only when the tender has been accepted. The mere act of submitting a tender cannot create such a contract; if it did, all responses to calls for tenders would give rise to absurd assertions of contractual rights.

That is, the contract arises when the tender has been accepted. The tender stated that the list of the subcontractors was an "integral part" of the contract. In the case at bar, acceptance of the subcontract came about when the verification period after November 8, 1985 was finalized on December 16, 1985. If timing had been an issue from the beginning, Nicol should have made this clear to all companies submitting tenders for subcontracts. The breach of Contract A came about in not awarding Contract B to Scott. If any change to the subcontractor was to be made, it had to be made by the owner or the architect under the terms of the contract.

41 While the court held in *Ron Engineering* that the contract was as between the owner and the general contractor, other authorities say that the same principles can apply with respect to the position of Nicol and Scott. In *Ron Engineering*, Estey J. held the following at p. 278:

The contractor has in this Court and in the Courts below also founded its claim for the return of the tender deposit on the basis that when the owner submitted the construction agreement for execution by the contractor-tenderer, the proffered contract was not signed and left blank the space in the contract form for the completion of the work although the contractor's tender had specified 90 weeks.

It should be noted that in the prescribed form of tender the contractor could either insert the time for the completion of the works, or on failing to do so, would be deemed to agree with the construction schedule stipulated by the owner's engineer.

.....

It would be anomalous indeed if the march forward to a construction contract could be halted by a simple omission to insert in the appropriate blank in the contract the number of weeks already specified by the contractor in its tender.

I agree with counsel for the appellant that in the case at bar, it is a "march forward" from Contract A to Contract B. If there had been a scheduling problem of magnitude at the beginning, Nicol could have gone back and pinned Scott down on the scheduling, as he had a contractual obligation to do so.

42 In *Peddlesden Ltd. v. Liddell Construction Ltd.* (1981), (sub nom. *M.J. Peddlesden Ltd. v. Liddell Construction Ltd.*) 128 D.L.R. (3d) 360, Ruttan J. of the British Columbia Supreme Court, referred to *Ron Engineering* and stated that the dicta of that case applies with equal validity to the first tender from the trade contractor to the general contractor. At p. 363 he states:

Mr. Justice Estey there was dealing as I say with only one tender, directed to the owner, but the *dicta* applies with equal validity to the first tender from the trade contractor to the general contractor. A binding unilateral contract is there created, with two further requirements to make it binding on the general contractor: (1) the owner must accept, and (2) that acceptance must be made within the 30-day period. That acceptance binds the owner, binds the general contractor, and of course continues to bind the subcontractor. Whether or not the subcontractor is notified within the 30-day period, is not a condition precedent. It is the act of acceptance which binds, not notification to him.

43 Following the reasoning in *Peddlesden*, and applying it to the case at bar, when Scott submitted its tender to Nicol, a binding unilateral contract was created. To make it binding on Nicol, the owner must accept it and its acceptance must be made within the verification period. The school board accepted the bid by Nicol, which included Scott's name as subcontractor, and the board did not reject Scott as a subcontractor within the verification period. The acceptance therefore bound the board, bound Nicol, and continued to bind Scott. The act of acceptance binds Nicol to Scott, not notification or lack thereof.

44 The *Peddlesden* case was applied in *Moncton Plumbing & Supply Co. v. Brunswick Construction Ltd.* (1985), 13 C.L.R. 52 (N.B. C.A.). The court held at p. 58:

As counsel for Brunswick correctly pointed out, *Ron Engineering* involved an owner and general contractor and not a subcontractor and general contractor as here. However, this situation did arise in *Peddlesden, supra*, where Ruttan J. had no difficulty in applying the remarks of Estey J. in *Ron Engineering* to a situation involving a subcontractor who bids through a bid depository to a general contractor.

Further at p. 61, it held:

When contractors avail themselves of the bid depository system, as they were obliged to do here by the owner, they must abide by its rules. In this case it is my opinion that the use by Brunswick of Moncton's bid submitted through the Moncton Bid Depository and the acceptance of Brunswick's bid by the owner during the 30-day period when Moncton's tender was "subject to acceptance", completed a contract between Brunswick and Moncton.

45 Both *Peddlesden* and *Moncton Plumbing* were cases put before the trial judge for consideration. It appears he chose not to either follow them or distinguish them and gave no reasons for this. The trial judge, in my view, erred in saying that *Ron Engineering* was a bid depository case. *Moncton Plumbing* was such a case, but the case at bar appears to be a combination of both.

46 In the case of *Northern Construction Co. v. Gloge Heating & Plumbing Ltd.* (1984), 5 C.L.R. 212 (Alta. Q.B.), the general contractor ended up suing the subcontractor for not going through with Contract A. It is the reverse situation of the case at bar but the principle remains the same. It was also a case of telephone bids and there it was clearly understood that at all times the bidder meant to be bound by the telephone bid. The case went to the Court of Appeal in Alberta [see (1986), 19 C.L.R. 281]. There the court set out how the bidding system operated. At p. 286 it states:

That evidence demonstrated that it was normal and standard practice for general contractors to accept last-minute telephone tenders from subcontractors, and that it was understood and accepted by those in the industry what while such tenders could be withdrawn prior to close of tendering, if not so withdrawn, that such tenders must remain irrevocable for the same term that the general contractors' tenders to the owner are irrevocable.

This industry practice is eminent common sense. Without such accepted practice the tendering system would become unenforceable and meaningless.

These principles apply equally to the *Scott* case.

47 Further, in *Calgary (City) v. Northern Construction Co.* (1985), 32 B.L.R. 81, the Alberta Court of Appeal overturned the trial judge's findings where he distinguished *Ron Engineering*. At pp. 88-89 it applies the analysis of *Ron Engineering* to the *Calgary (City)* case. That case went on to the Supreme Court of Canada. The judgment was delivered on December 17, 1987. McIntyre J., in that judgment, set the issue as follows [reported [1987] 2 S.C.R. 757, pp. 757-758]:

This appeal raises the question of whether the appellant, a general contractor who made a tender, expressly agreed to be irrevocable for a stated period or until the acceptance of another tender, was entitled to refuse performance of the contract resulting from its acceptance because of honest error in its preparation resulting in a lower price than intended. In accordance with the tendering procedure, tenders were opened and the tender of the appellant was accepted.

This appeal, in my view, is governed by the judgment of this Court in *The Queen in right of Ontario and the Water Resources Commission v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111. Following that decision, I would dismiss the appeal with costs.

48 Finally, *Ron Engineering* was followed in *Chinook Aggregates Ltd. v. Abbotsford (Municipal District)* (1987), 28 C.L.R. 290 (B.C. Co. Ct.). In the annotation to the case, the issue is set out as follows at p. 291:

Is the award of a construction contract by an owner a lottery or does the owner have duties to make the award in accordance with the industry practice that contracts are awarded to the low qualified bidder? The determination of this issue is central to the reasoning of the Honourable Judge Selbie in *Chinook Aggregates Ltd. v. Abbotsford (Municipal District) et al.*

The lottery theory of contract awards originated in the traditional legal analysis that tender calls were invitations to treat, bids were offers, and the tender caller had an unlimited discretion to accept or reject any or all bid offers. This principle was embodied in the typical privilege clause "The lowest or any tender will not necessarily be accepted".

In 1981 in *R. v. Ron Engineering & Construction (Eastern) Ltd.*, [1981] 1 S.C.R. 111, 13 B.L.R. 72, 119 D.L.R. (3d) 267, 35 N.R. 40 (sub nom. *Ron Engineering & Construction (Eastern) Ltd. v. Ontario*) (S.C.C.) the legal rules were reversed and a contractual regime was established between callers and bidders wherein the tender call is an offer, the bid (in part) is an acceptance and together they form a separate tender contract preliminary to the construction contract itself.

Chinook followed *Ron Engineering* and applied the statements of Estey J. at p. 275 [D.L.R.]. In *Chinook* the court held the following at p. 296:

We are also concerned with contract A and here, as there, the defendant's obligation was not to award a contract except in accordance with the tender call. Here again we are faced with what the terms of the tender call are—are they restricted to the plain meaning of the phrase in question, or are there implied terms included?

49 The contract bidding process was reviewed in some detail by P. Donald Rasmussen in an article entitled "Claims Arising From the Bidding Process", Insight Conference on the Construction Claim, November 13-14, 1989. At p. 24 of his article, after reviewing the cases as noted above, he states the following:

The effect of all of these authorities is to require a careful analysis in each instance of the terms of the contract which result from the submission of a bid. It is apparent that at least in respect to subtrades the Court will imply terms based upon custom and usage of the industry. There is no reason why such terms could not also be implied into a contract between owner and contractor should evidence be called to properly establish the basis for such a conclusion. It is not the inevitable result that a low bidder will be awarded the contract. (Emphasis added)

50 When Nicol accepted Scott's bid and inserted its name in the tender list of subcontractors, it was not simply putting a dollar figure on the tender list. There was an implication that it knew Scott, that Scott was aware of the terms of the contract and the scheduling, and was an acceptable subcontractor to Nicol. The terms of the general contract made it clear that no subtrade could be changed without the written approval of the owner and architects in accordance with General Condition 10.

3. Conclusion

51 In conclusion, I am of the view that the learned trial judge failed to consider the reasoning in *Peddlesden, Moncton Plumbing, Northern Construction*, and *Calgary (City)* when considering whether the principles in *Ron Engineering* applied with equal validity to the first tender from Scott to Nicol. In my view these cases apply. I would allow the appeal, with costs to the appellant fixed at \$6,500. The question of damages shall be referred back to the trial judge for assessment if the parties cannot otherwise agree.

Appeal dismissed.

TAB 14

1999 CarswellINS 291

Nova Scotia Supreme Court

Western Plumbing & Heating Ltd. v. Industrial Boiler-Tech Inc.

1999 CarswellINS 291, 180 N.S.R. (2d) 41, 48 C.L.R. (2d) 82, 557 A.P.R. 41, 92 A.C.W.S. (3d) 435

Western Plumbing and Heating Limited, Plaintiffs and Industrial Boiler-Tech Inc., Defendant

Gruchy J.

Heard: August 26, 1999

Judgment: September 24, 1999

Docket: S.H. 140040C/97

Counsel: *John Kulik* and Robert Blackie, (Articled Clerk), for Plaintiff.*Colin Bryson*, for Defendant.

Subject: Contracts

Related Abridgment Classifications**Construction law****II Contracts****II.2 Subcontracts****II.2.d Miscellaneous****Headnote****Construction law --- Subcontracts — General**

Plaintiff was preparing tender for construction project and asked defendant boiler supplier for quote on availability and cost of two boilers — Defendant did not know about tender and on January 17 made offer to sell two boilers to plaintiff with no reference to revocability of offer — On March 4 plaintiff contacted defendant and attempted to get defendant to reduce price of boilers — Defendant realized that price it had given was for one boiler only and that it had failed to convert American dollars to Canadian dollars with result that price it quoted for boilers was far too low — Defendant revised price and informed plaintiff who sent purchase order for original low price — When defendant refused to deliver, plaintiff purchased boilers from next lowest bidder and then brought action against plaintiff for difference in price paid and defendant's offer — Action dismissed — Plaintiff did not have actual knowledge of defendant's mistake — Defendant's offer did not contain any express term of irrevocability but it was reasonable to imply term of irrevocability for 30 days for acceptance of prime contract by plaintiff plus reasonable time thereafter for plaintiff's acceptance of subcontracts — Plaintiff did not accept defendant's offer within that time — When plaintiff contacted defendant on March 4 it was to attempt to get a lower price and defendant then discovered its mistake and revised offer upward before plaintiff accepted offer — In circumstances, defendant had revoked offer so that plaintiff's purported later acceptance of it was ineffective.

Table of Authorities**Cases considered by Gruchy J.:**

Belle River Community Arena Inc. v. W.J.C. Kaufmann Co. (1978), 87 D.L.R. (3d) 761, 20 O.R. (2d) 447, 4 B.L.R. 231 (Ont. C.A.) — distinguished

Custom Iron & Machinery Ltd. v. Calorific Construction Ltd. (1990), 39 C.L.R. 276 (Ont. Dist. Ct.) — referred to
Defence Construction (1951) Ltd. v. Municipal Enterprises Ltd. (1985), (sub nom. *Municipal Enterprises Ltd. v. Defence Construction (1951) Ltd.*) 71 N.S.R. (2d) 59, (sub nom. *Municipal Enterprises Ltd. v. Defence Construction (1951) Ltd.*) 171 A.P.R. 59, 23 D.L.R. (4th) 653 (N.S. C.A.) — referred to

Northern Construction Co. v. Gloge Heating & Plumbing Ltd., [1984] 3 W.W.R. 63, 5 C.L.R. 212, 30 Alta. L.R. (2d) 1, 52 A.R. 54, 6 D.L.R. (4th) 450 (Alta. Q.B.) — considered

Northern Construction Co. v. Gloge Heating & Plumbing Ltd., 67 A.R. 150, 42 Alta. L.R. (2d) 326, 27 D.L.R. (4th) 264, 32 B.L.R. 142, 19 C.L.R. 281, [1986] 2 W.W.R. 649 (Alta. C.A.) — referred to
R. v. Ron Engineering & Construction (Eastern) Ltd., 13 B.L.R. 72, (sub nom. *Ron Engineering & Construction (Eastern) Ltd. v. Ontario*) 35 N.R. 40, 119 D.L.R. (3d) 267, [1981] 1 S.C.R. 111 (S.C.C.) — distinguished

ACTION by contractor for breach of contract by subcontractor in failing to deliver materials at price quoted.

Gruchy J.:

Factual Overview

1 In late 1996 and early 1997 the plaintiff, Western Plumbing and Heating Limited ("Western"), prepared a tender as a result of a call by a prime contractor, Roscoe Construction Limited, ("Roscoe") for construction of an addition to a research laboratory in Kentville, Nova Scotia. In the process of preparing its tender, Western inquired orally of the defendant, Industrial Boiler-Tech Inc. ("Industrial") whether it could supply two certain boilers. Industrial was not privy to and had no knowledge of the details of Roscoe's tender call or any of the terms and conditions thereof. The tender call to the prime contractors was to close on January 15, 1997 which date was later extended to January 17, 1997.

2 One of the terms of the tender call to prime contractors was that bids were to remain open for acceptance and be irrevocable for a period of 30 days after the closing date. Industrial had no knowledge of that term.

3 After Western inquired whether Industrial could supply the boilers, Industrial faxed on January 6, 1997, a reply and asked for specifications or a description of the equipment requested. When Industrial received the specifications it obtained a price for the boilers from Bryan Boilers, a US manufacturer. Industrial then prepared a bid or offer for four separate items including (as one of the four items) two Bryan boilers. That offer was neither signed nor under seal. It was submitted by fax to Western at 7:32 p.m. on January 16, 1997. The closing date for the subcontractors' bids to Roscoe was the following day at 3:30 p.m. The offer with respect to both boilers was for a total price of \$52,161.00.

4 On January 17, 1997 at 11:26 a.m., Industrial revised its quote as follows:

If stop/check valves are to be supplied rather than regular stop steam valves an additional \$8,000 (total for two) must be ADDED to our boiler pricing. If regular stop steam valves are sufficient, the price of \$52,161.00 remains the same.

5 The tendering process was not through the Nova Scotia bid depository system.

6 Industrial's offer contained no reference to revocability.

7 Western received three bids for the boilers, the lowest of which was Industrial's and which was carried through by it in its bid to Roscoe. The other two bids were for \$74,529 and \$94,958 respectively, or 42% and 82% higher than Industrial's.

8 Notwithstanding the date specified for the awarding of the principal contract there was a delay. On February 28, 1997 Roscoe awarded the subcontract to Western.

9 On March 4, 1997, Western contacted Industrial. There are varying versions of that oral contact. Having heard the witnesses who participated in those telephone conversations - Joseph Hill, the purchaser for Western, Shelley Godin, the general manager of Industrial and Jacques Godin, the president of Industrial - I have reached certain conclusions. In so doing I have decided that where the testimony of Mr. Hill differs from that of Mr. and Mrs. Godin, I accept the latter.

10 I find that Mr. Hill did not accept Industrial's offer or quote. Instead, Mr. Hill told Mrs. Godin that the price for the boilers was high and he wanted it revised. Mrs. Godin asked him where he wanted the price to be and he replied \$50,000.00 - and if that was the price Industrial could have the order. She inquired further about the reason for this request and Mr. Hill told her that there was another bid of \$50,000.00 for Cleaver-Brookes Boilers. As Mrs. Godin was not familiar with the quote she said that she would discuss the matter with her husband.

11 Mr. Hill does not dispute that he offered \$50,000.00, but does deny that he mentioned another offered price. I conclude that Mrs. Godin's version is correct. Mr. Hill explained in court that his job was to obtain better prices than those quoted and he had looked at the price of \$52,000 and "figured" that asking a price drop of \$2,000.00 would not be too much.

12 Mrs. Godin discussed the matter with her husband who then reviewed the quotation he had given. He realized then he had made two serious mistakes in his calculations: he had failed to multiply the price of the boiler by two - for two boilers - and had failed to convert the US dollars to Canadian dollars. He had seriously underbid and his quotation ought to have been \$74,561.

13 Mr. Godin then contacted Ross Marshall, the estimator for Western with whom he had dealt and told him the boilers could not be supplied for the price quoted. He said that the price was so low (in comparison with other quotes) Western should have recognized an error had been made. Marshall told him that Industrial could not raise the price.

14 I accept Mr. Godin's version of that conversation and that Marshall told him he knew he had a "hot price" and if Godin had "screwed up" he would have to pay for it. He said Western had previous experience with a similar error by another subcontractor or supplier and had made that subcontractor pay the difference.

15 On March 4, 1997 Industrial faxed Western and revised the price for the boilers to \$74,561 and said that it "would not honor [sic] the original price of \$52,161". It also said its quote on January 17, 1997 had been "... the industry standard 30 days, unless otherwise noted". It went on to suggest that as Industrial understood Western could buy the boilers elsewhere for \$50,000 it should do so before that price increased.

16 On the following day Industrial faxed a further revised quote to Western in which the March 4 price for the boilers was repeated and prices for other items were changed as a result of further discussions or bargaining between Industrial and Mr. Hill of Western.

17 On March 7, 1997 Western sent a purchase order to Industrial for the boilers for \$52,161. Industrial refused to deliver the boilers and Western purchased them from the next lowest bidder for \$66,408. It has claimed against Industrial for the difference between its offer and the price paid: \$14,247.00.

Issues

18 Various factual and legal issues arise in this matter. They are:

1. The effect of Industrial's mistake.
2. Period of non-revocability.
- 3.(a) Was there a valid revocation?
- (b) Was there a valid acceptance?
4. Bid shopping.
5. Negligent misrepresentation.

1. The effect of Industrial's mistake

19 The facts which I find and which are relevant to this subject are now set out.

- (a) Industrial made a mistake in the preparation of its bid.
- (b) The arithmetic basis for the bid was not set forth in the quotation.
- (c) Industrial's quotation was substantially lower than the two competing bids: \$22,368 and \$42,397 respectively.

(d) Western's estimator, Ross Marshall, noticed the wide difference. In testimony at trial Mr. Marshall said he was not surprised the Industrial quote was so low in relation to the other two but was reminded that on discovery he had said when he looked at the others he was surprised and agreed that the bid was "substantially" low. I accept the discovery version, as Mr. Marshall did as well when reminded of it.

(e) Mr. Godin of Industrial did not recognize his errors until Mr. Hill asked that the price be revised.

(f) Western had carried Industrial's quote forward in its bid to Roscoe apparently at \$60,161.00 although in its tender package Western shows an unexplained reduction of \$5,000.00 for the mechanical component of its bid. None of the witnesses was able to explain that reduction and I do not conclude that it is related to the boiler price.

(g) Industrial's quotation was not signed, it was not under seal and it was not presented pursuant to the rules of a bid depository or under the terms and conditions of either the owner's call for tenders or Roscoe's call for bids to subcontractors or suppliers.

20 The defendant has submitted that where a subcontractor knew that a supplier had made a mistake in a tender he could not accept such a mistaken tender and enforce it. The defendant has referred to the following cases in arguing its position: *Belle River Community Arena Inc. v. W.J.C. Kaufmann Co.* (1978), 87 D.L.R. (3d) 761 (Ont. C.A.); *R. v. Ron Engineering & Construction (Eastern) Ltd.* (1981), 119 D.L.R. (3d) 267 (S.C.C.); *Custom Iron & Machinery Ltd. v. Calorific Construction Ltd.* (1990), 39 C.L.R. 276 (Ont. Dist. Ct.); *Defence Construction (1951) Ltd. v. Municipal Enterprises Ltd.* (1985), 71 N.S.R. (2d) 59 (N.S. C.A.).

21 I am unable to conclude that any of these cases stand for the proposition that a contractor is under a legal obligation to inquire into or question the validity of a price on the mere suspicion that it appears to be low.

22 Miller, J. in *Northern Construction Co. v. Gloge Heating & Plumbing Ltd.* (1984), 6 D.L.R. (4th) 450 (Alta. Q.B.) at pages 458-459 explained in plain terms the practical considerations in the vast majority of cases in relieving a subcontractor of its bid because of a mistake.

The general contractor does not do all of the work with its own forces and, typically, subcontracts out much of the required supply of materials and labour to firms who specialize in different areas of construction. The general contractor knows it cannot complete the work without hiring various subcontractors and the subcontractors cannot deal directly with the owner as the latter wants to deal only with the general contractor who supplies one overall price that the owner can rely upon. The general contractor, in making up its tender, has to rely upon the prices quoted to it by the various subcontractors for it is upon their bids that the general contractor bases the price he guarantees to the owner. All of these intertwined relationships have given rise to a fairly complete set of what one might call 'rules' developed through common usage and understanding in the industry. Sometimes these rules which become established in different industries, are compatible with the ordinary principles of contract law applicable to all contracts but occasionally they deviate from these principles. According to the expert's testimony the tendering process in the construction industry in Alberta has certainly developed some rules through extensive usage in the industry. One of the peculiar arrangements testified to by the two expert witnesses, Fowler and Crerar, was that when a general contractor invites bids from subcontractors it wants to hold those bids open for acceptance until it knows whether its tender has been accepted by the owner. In simple terms, the general contractor asks the subcontractor to give it a price that it can hold the latter to for X days but the general contractor is under no legal obligation to sign a contract with the subcontractor unless the general tender is accepted within the time period by the owner. Thus, in its simplest form, it may be observed that one party, namely the subcontractor, is bound to perform for the other, but until the owner accepts the contractors' tender, there is no obligation upon the contractor to perform. Viewed in this light, the usual arrangements between a contractor and a subcontractor are akin to an option contract with the subcontractor playing a role similar to an optionor and the contractor acting like an optionee. There are some obvious difficulties in carrying this analogy too far but it may be useful in examining the issues raised by this case.

Before looking at the various authorities cited by both counsel, I must observe that many of them deal with a direct confrontation between the owner and the general contractor where the mistake is made by the general contractor in submitting its tender to the owner. Usually the mistake is found out immediately and reported to the owner before the owner has had time to accept the tender. Many of those cases seem to turn upon the law of mistake and the equitable principles which flow therefrom rather than questions of acceptance or withdrawal. In the case at bar the mistake is created by the subcontractor and the bid supplied was relied upon by the general contractor who committed itself to the owner. To my mind there is a great difference between these two situations for, in the first instance, it is the author of the mistake who suffers if it is held to the contract. In the second instance, if the general contractor is held to its contract with the owner but the subcontractor, who made the mistake, is relieved of its commitment, then it will be an innocent party who will suffer for the mistake while the perpetrator of the error escapes any liability.

23 Miller, J. then analysed the various cases cited before him including for the most part those now cited to me. That decision was upheld by the Alberta Court of Appeal, *Northern Construction Co. v. Gloge Heating & Plumbing Ltd.* (1986), 27 D.L.R. (4th) 264 (Alta. C.A.). In the trial decision Miller, J. examined the decision in *Belle River* and that of Estey, J. of the Supreme Court of Canada in *Ron Engineering*. In the former a subcontractor was not held liable for the consequences of a tender which contained a mistake which was drawn to the attention of the contractor before acceptance. In the latter the owner was entitled to retain a deposit submitted with a tender pursuant to the terms of the tender call and which tender contained a mistake and which was drawn to the attention of the contractor prior to the award.

24 It seems to me that *Belle River* and *Ron Engineering* are not inconsistent with each other. Each of these cases turns on the question of whether the recipient of the bid had actual knowledge of the error before the bid had been accepted. As Miller, J. remarked in *Gloge* with respect to *Belle River* (page 461):

It would seem that the *Belle River* decision is based more on the question of inequity of trying to accept an offer once being apprised of a mistake made by the offeror, rather than any question of whether the offer was legally withdrawn prior to acceptance.

25 He remarked with respect to *Ron Engineering*: (p. 463)

It seems clear that Estey, J. felt that it was unnecessary to even consider the law of mistake if, at the time contract A came into existence when tenders were opened, the recipient of the mistaken bid did not know of the mistake. Having come to this conclusion, Estey, J. felt that the Ontario Court of Appeal had erred in applying law of mistake as it had in the *Belle River* decision (*supra*), and restored the judgment of the learned trial judge who had found for the owner.

26 I respectfully agree Miller, J.'s succinct analysis of these two decisions.

27 In the case before me, I am unable to conclude that Western had actual knowledge of the error. Marshall had reason to be suspicious but he did not act upon that suspicion. With respect to the differences in the bids he said he had not been surprised as "prices can change overnight". Elsewhere he remarked that there is always time for one more phone call. (In the context of my considerations below, these remarks are significant.)

28 I do not elevate Marshall's suspicions to the level of actual knowledge nor do I conclude that Marshall's suspicion should have led to an imputation that he ought to have realized that there was an error. Rather, the outcome of this case will turn on other factors.

2. Period of Non-revocability

29 The facts which I find and which are relevant to this subject are now set out:

(a) Industrial's bid contained no time limit for acceptance and made no reference to a period of non-revocability.

- (b) The owner's "instructions to bidders" specified that "bids shall remain open to acceptance and shall be irrevocable for a period of thirty (30) days after the bid closing date.
- (c) Western was aware of that period of irrevocability.
- (d) Industrial was not aware of the context of the tender call or of the instructions to bidders.
- (e) Industrial was not aware of any extensions of the closing date.
- (f) Industrial was not aware of any further delays in the awarding of the contract.
- (g) The other two bidders on the boilers specified periods of non-revocability: 30 days and 60 days respectively.
- (h) As a result of economic conditions in the construction business it has not been unusual (according to one witness, George Himmelman, whose testimony I will explore more fully below) for subtrades to hold their bids open for periods much longer than 30 days. According to Mr. Himmelman, however, his practice in such cases was to go back to the subtrades to see if the bid is still open.
- (I) Industrial had bid on boilers manufactured in the United States and accordingly, was vulnerable to the extra uncertainties of changes in currency exchange rates and potential problems of delivery dates.

30 As mentioned earlier, as soon as Industrial realized its mistake, and on Western's request to revise its price, it faxed Western and said "our prices are the industry standard 30 days unless otherwise noted." On cross-examination, Mr. Godin said in effect he would have felt bound by an acceptance of the offer by Western within 30 days.

31 As there was no express term of irrevocability in the documents between Industrial and Western, and the matter had not been discussed or expressly agreed upon, evidence concerning the practice of the trade would have been helpful. I have no evidence before me of the general practice of the trade. Mr. Himmelman is the president and chief executive of Himmelman Contractors and has been in that business since 1956. He has personally been involved in the tendering process for forty years. He spoke of his practice but no attempt was made to have him qualified as an expert and he did not assert any opinion as an expert. Any opinions he did assert were clearly related to his personal experience only. It was also agreed by counsel prior to trial that Mr. Himmelman's evidence would not be put forth as an expert's opinion and would represent only his personal experience and practice.

32 Clearly, a bid by a subcontractor in a tendering situation should be open for acceptance for a reasonable period of time. I accept that the 30 days for acceptance of a prime contract is reasonable and the period for acceptance of subcontracts obviously must be within a reasonable period after that closing date. In this case, Industrial could reasonably have concluded that 30 days would be the time for acceptance of the prime contract and its bid would have to be open for acceptance for a reasonable time thereafter so as to allow Western an opportunity to make its acceptance known. But 16 days elapsed with no attempt by Western to follow Mr. Himmelman's practice. I conclude that the period of 16 days is unreasonable. It was therefore open for Industrial to revoke its offer which, as I find below, was what it did.

33 I reach this conclusion keeping in mind Mr. Ross Marshall's remark that prices can change daily. That was presumably more so with Industrial's offer as it was subject to the uncertainties as I have set forth above. In the circumstances, it would be unreasonable to assume that Industrial would hold its bid open for acceptance indefinitely.

34 It is obvious that irrevocability of a tender is an essential requirement for the efficacy of a formal tendering process. In that process the "General Conditions" or "Information for Tenderers" would ordinarily set out the precise terms of that requirement. That was precisely the subject considered by Estey, J. in *Ron Engineering* (p. 122-23). But Iacobucci, J. (at paragraph 17) pointed out in *Defence Construction* that the analysis of Estey, J. was "... rooted in the terms and conditions of the tender call...". In the case before me it cannot be argued that Industrial was involved in the formation of Contract A (to use the short hand phrase coined by Estey, J.) and accordingly, cannot be bound by the terms and conditions of the tender call.

35 It is appropriate, however, to find an implied term of Industrial's offer to Western and I have concluded above that irrevocability for thirty days plus a reasonable period for the subcontractor to exercise its right of acceptance to suppliers is appropriate. Western did not accept Industrial's offer within that period.

3 (a) Was there a valid acceptance?

36 With respect to the matter of acceptance, I have set forth my findings of fact above and it is unnecessary to repeat them. Mr. Hill of Western did not accept Industrial's bid. Rather, he called Industrial and asked that the price be revised and on no apparent rationale, asked that the price be dropped by \$2,000. Industrial responded to the request for revision only and revised the price upwards. That upwards revision was complete before Mr. Hill purportedly accepted the original offer.

3 (b) Was there a valid revocation?

37 I conclude that by revising its offer at Western's invitation, Industrial revoked the original bid and reoffered the boilers at the higher price, which offer was not accepted.

38 Industrial's letter of March 4, 1997 was express: it would not honour the original January 17, 1997 price.

39 Western's purchase order of March 7, 1997 was ineffective. It was forwarded to Industrial subsequent to revocation.

40 I therefore conclude that there was no valid acceptance of the January 17, 1997 bid by Industrial and that bid was validly revoked prior to purported acceptance by Western.

4. Bid Shopping

41 In view of the findings I have expressed above it is likely unnecessary to address this subject. Nonetheless, as the parties have made submissions on this matter I feel some compulsion to express my views and conclusions on it.

42 All the witnesses who spoke on the matter of bid shopping agreed that a practice of bargaining after close of tenders has developed in the informal tendering process. I find that the practice as described to me by the parties and the various witnesses is unacceptable.

43 Mr. Himmelman explained that in his experience subcontractors are requested routinely to lower their bids after the prime contract has been awarded. He and the other witnesses testified that is how contractors make extra money. The contractor obtains bids from subcontractors who in turn obtains bids from suppliers or other subcontractors and those bids are taken into consideration in its bids to the prime contractor. The prime contractor then presents a tender formally to the owner. If the tender is accepted the contractor and the subcontractors then set about to negotiate with the subcontractors and suppliers to lower their bids. Mr. Himmelman said that he bases his tenders on the assumption that he would obtain lower bids from suppliers and as a result an anticipated but uncertain reduction of cost is passed on to the owner. But there is no certainty the savings effected by the contractors are passed on to the owner; they are profit to the contractors. Mr. Himmelman said that in his experience it was unusual for the contractor not to attempt to bargain. In return, the subcontractors and suppliers almost never refuse to bargain and they accept that practice.

44 Various witnesses said bid shopping is not ethical but the practice described above, according to them, is not bid shopping. The witnesses said that bid shopping is when a contractor obtains a price from a subcontractor and then uses that price as a bargaining chip to bargain with other suppliers or subcontractors. The witnesses distinguish that practice from a subcontractor going back to a supplier and asking for a price revision.

45 It is my conclusion, in the circumstances as described to me by the various witnesses, that the contractors and subcontractors have turned the tendering process into a sham. The assertion that the practice described to me is not bid shopping appears to be sophistry and hypocritical. The practice encourages subcontractors and suppliers to put in inflated bids, keeping in mind that ultimately the contractor will attempt to force them to lower their prices. The lowered prices will result in a profit to the

contractor, but with no saving passed on to the owner. This practice will ultimately defeat (and arguably has done so) the value of a bona fide tendering process. In effect, Western has by this action requested the court to validate the bargaining process as I have described it. I will not do that.

46 The value of the integrity of the bidding system was addressed in *R. v. Ron Engineering & Construction Ltd.*, by Estey, J. of the Supreme Court of Canada when he said:

I share the view expressed by the Court of Appeal that integrity of the bidding system must be protected where under the law of contracts it is possible so to do.

47 I must agree with that view. The companion view is that an attack on the integrity of the bidding system should not be protected, where possible.

48 The process of bid shopping is destructive of the tendering system. In my view the process followed by Western amounted to bid shopping and as described to me borders on deceit.

5. Negligent misrepresentation

49 Western has pleaded that Industrial has committed the tort of negligent misrepresentation by advising it that it would supply the boilers at the price quoted and failed to do so. This aspect of Western's claim must also fail. Industrial had indeed made a negligent misrepresentation to Western and Western had the opportunity in reliance upon the misrepresentation either to accept the bid within a reasonable period of time or ask that it be extended but failed to do so. By its own action it created its own difficulties.

50 Further, with respect to the subject of misrepresentation, it is clear upon my findings that while Industrial had negligently misrepresented the cost of the boilers, its negligent offer had expired and then Western in attempting to bargain with Industrial misrepresented that it could purchase the boilers for \$50,000.00. Industrial relied upon that deliberate misrepresentation when it revised its price as requested and suggested to Western that it proceed to purchase the boiler at the price quoted.

Conclusion

51 This action will be dismissed with costs. If necessary I will hear the parties as to costs.

Action dismissed.

**CAMERON STEPHENS MORTGAGE
CAPITAL LTD.**

-and-

CONACHER KINGSTON HOLDINGS INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**BOOK OF AUTHORITIES OF THE RECEIVER
(MOTION RETURNABLE NOVEMBER 18, 2026)**

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