

COURT FILE NUMBER:

1903-24389

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF  
ALBERTA IN BANKRUPTCY AND  
INSOLVENCY

JUDICIAL CENTRE

EDMONTON

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 TLI CHO LANDTRAN  
TRANSPORT LTD., 1456998 ALBERTA LTD., and  
1456982 ALBERTA LTD.

APPLICANT

TLICHO INVESTMENT CORPORATION

RESPONDENTS

TLI CHO LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

DOCUMENT

**APPLICATION**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

McMillan LLP  
Suite 1700, 421 - 7 Avenue S.W.  
Calgary, AB T2P 4K9

Phone: 403-531-4700  
Fax: 403-531-4720

Attention: Adam Maerov  
Phone: 403-215-2752  
Email: adam.maerov@mcmillan.ca

Attention: Kourtney Rylands  
Phone: 403-355-3326  
Email: kourtney.rylands@mcmillan.ca  
File No. 236110

**NOTICE TO RESPONDENTS**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge. To do so, you must be in Court when the application is heard as shown below:

Date:	December 6, 2019
Time:	2:00 pm
Where:	Edmonton Law Courts
Before Whom:	Justice Lema

Go to the end of this document to see what else you can do and when you must do it.

**Remedy Claimed or Sought:**

1. An order (the “**Order**”) extending the stay period established pursuant to the initial order granted by the Honourable Justice Graesser in the within proceedings on November 29, 2019 (the “**Initial Order**”), amending and restating the Initial Order, and expanding the scope of relief granted in such Initial Order, all as set out in the Order attached hereto as Schedule “A”, including, *inter alia*, the following relief:
  - a. Staying all proceedings, rights and remedies against or in respect of the Transport Companies or their business or property, or the Monitor, or the Directors except as otherwise set forth in the Initial Order, until February 14, 2019;
  - b. Authorizing the Transport Companies to carry on business in a manner consistent with the preservation of their business and property;
  - c. Authorizing the Transport Companies to pay the reasonable expenses incurred by the Transport Companies in carrying out their business in the ordinary course, including certain expenses incurred prior to the date of the Initial Order;
  - d. Authorizing the Transport Companies to pay the reasonable fees and disbursements of the Monitor and its counsel, the Applicant’s counsel, and the Transport Companies’ counsel;
  - e. Granting a first charge over the assets and property of the Transport Companies in favour of the Monitor, its legal counsel, the Applicant’s counsel, and the Transport Companies’ counsel in respect of their fees and disbursements, to a maximum amount of \$300,000;

- f. Approving a proposed sale process of the Transport Companies' assets and property (such sale process to be attached to the First Report of the Monitor); and
- g. Such further and other relief as counsel may advise and this Court deem just.

**Grounds for Making this Application:**

Background of the Tłıchǫ

- 2. The applicant, Tlıcho Investment Corporation (“**TIC**” or the “**Applicant**”), is the ultimate parent company of the respondent, Tli Cho Landtran Transport Ltd. (“**Tłıchǫ Landtran**”).
- 3. The Applicant is also the majority shareholder of the respondents 1456998 Alberta Ltd. (the “**General Partner**”), and 1456982 Alberta Ltd. (the “**Limited Partner**”), owning 90% of the voting shares of each company, which companies are the general partner and the limited partner of Ventures West Transport LP (“**Ventures West**” and together with Tłıchǫ Landtran, the General Partner and the Limited Partner, the “**Transport Companies**”).
- 4. The Applicant is wholly owned by the Tłıchǫ Government. The Tłıchǫ are an aboriginal people of Canada that have traditionally used and occupied lands in and adjacent to the Northwest Territories.
- 5. The Tłıchǫ Government was formed pursuant to an agreement between the Tłıchǫ, the Government of the Northwest Territories and the Government of Canada on August 25, 2003 (the “**Tłıchǫ Agreement**”). The Tłıchǫ Agreement was ratified by the *Tłıchǫ Land Claims and Self-government Agreement Act*, SNWT 2003, c 28.
- 6. The Tłıchǫ Government owns and operates a number of businesses for the benefit of the Tłıchǫ, including the Applicant. The Applicant is the ultimate parent company of each of the businesses and companies owned and operated by and on behalf of the Tłıchǫ Government. The Applicant employs directly and indirectly more than 450 employees, many of whom are residents of Tłıchǫ Communities.

The Applicant is a Creditor of the Transport Companies

- 7. The Applicant and other Tłıchǫ Companies have provided \$37.6 million in advances to the Transport Companies.

8. The Applicant is a shareholder and creditor of the Transport Companies and as such is a person with an interest in the matter with standing to bring the within application.

#### Location of the Transport Companies

9. Tłı̨chǫ Landtran is a corporation incorporated in the Northwest Territories, and extra-provincially registered in Alberta. The Limited Partner and the General Partner are corporations incorporated in Alberta, with registered offices in Edmonton, Alberta. Ventures West is registered as a limited partnership in Alberta.
10. The Transport Companies' operations are headquartered in Sherwood Park, Alberta, where the Transport Companies lease office and yard space. The office and yard space has historically provided general management, accounting, human resources, mechanical inspection and maintenance, and sales and marketing functions for the Transport Companies on an integrated basis.

#### Business of the Transport Companies

11. The Transport Companies operate a transportation services business which specializes in transportation across winter and ice roads in the western provinces, the Yukon and the Northwest Territories.
12. The Transport Companies provide bulk transportation services, with much of their business generated seasonally in February and March of each year during which time the winter roads are open and contracts are available to haul products (mainly fuel and cement) to various northern diamond mines. The Transport Companies operate an integrated business.
13. Given the seasonal nature of the business, the Transport Companies spend a significant amount of the year incurring expenses maintaining their fleet in preparation for the commencement of their seasonal work. Transport Companies rely very heavily on a few contracts each year to earn revenue.
14. The Transport Companies' most significant contract was a five-year contract to supply fuel to a mining operation located in the Northwest Territories (the "**Fuel Contract**"). The Transport Companies have provided fuel to the customer for approximately 10 years.

15. The Fuel Contract represented approximately 27% of the revenue of the Transport Companies, but such contract had historically been unprofitable for the Transport Companies. The Transport Companies' most recent Fuel Contract expired and in 2019 the Transport Companies submitted a bid for a new five year fuel contract with revised pricing to earn a modest profit margin. The Transport companies were ultimately unsuccessful in their bid and lost the Fuel Contract for 2020.
16. Outside of the Fuel Contract, the Transport Companies perform services under additional contracts, with the most significant three being for the supply of fuel and/or cement (the "**Additional Contracts**").

#### Financial Difficulties

17. The loss of the Fuel Contract resulted in the Transport Companies' revisiting their forecast for the 2020 fiscal year. It was determined that, should the Transport Companies operations be continued and the Transport Companies perform only the Additional Contracts, the Transport Companies would report an estimated net loss of approximately \$9.3 million.
18. The forecasted losses to the Transport Companies due to the loss of the Fuel Contract are material and are in addition to years of significant losses already experienced by the Transport Companies.
19. Given the long-term financial difficulties faced by the Transport Companies, the Tłıchǵ Government and the Applicant engaged MNP Ltd. to assist them with conducting a strategic review of operations. Given their unsuccessful bid for the Fuel Contract, it was determined that the Transport Companies have material excess capacity and it is necessary to downsize their operations.

#### Need for CCAA Protection

20. The Transport Companies have caused significant losses for each of the other Tłıchǵ Companies, the Applicant, the Tłıchǵ Government and ultimately the Tłıchǵ people. Without relief under the CCAA, the Transport Companies will continue to incur losses, that could ultimately jeopardize the continued operations of the other Tłıchǵ Companies and the continued employment of their approximately 410 other employees. Any interruption of such operations would have significant negative consequences for the Northern people, businesses and communities served by the Tłıchǵ Companies.

21. The Transport Companies are affiliates and are insolvent and their liabilities individually and collectively exceed \$5 million.
22. The Transport Companies require an extension of the stay of proceedings to provide stability for their business and additional time to conduct an orderly sale of their assets.
23. The Transport Companies have been acting, and are acting, in good faith and with due diligence.
24. Ventures West is a limited partnership whose operations and finances are so intertwined with the other Transport Companies that not extending the stay to it would significantly impair the effectiveness of the stay.
25. MNP Ltd. has consented to act as the Court-appointed monitor of the Transport Companies in these proceedings (in such capacity, the “**Monitor**”) if so appointed by the Court.

**Material or Evidence to be Relied On:**

26. The Affidavit of Mark Brajer, sworn on November 27, 2019.
27. The Pre-Filing Report of the Monitor.
28. The First Report of the Monitor.

**Applicable Rules:**

29. Rules 6.3(1), 6.9, 6.28, 11.27 of the Alberta Rules of Court.
30. Such further and other rules as counsel for the Applicants may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

31. *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
32. Such further and other Acts and regulations as counsel may advise and this Court may permit.

**Any Irregularity Complained of or Objection Relied On:**

33. There are no irregularities complained of, or objections relied on.

**How the Application is Proposed to be Heard or Considered:**

34. The Applicant proposes that the Application be heard in person with one, some, or all of the parties present.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicants.

**SCHEDULE "A"**



Clerk's Stamp:

COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE OF

1903-24389  
COURT OF QUEEN'S BENCH OF ALBERTA  
EDMONTON

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 TLI CHO LANDTRAN  
TRANSPORT LTD., 1456998 ALBERTA LTD., and  
1456982 ALBERTA LTD.

APPLICANT  
RESPONDENTS

TLICHO INVESTMENT CORPORATION  
TLI CHO LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

DOCUMENT

**AMENDED AND RESTATED INITIAL CCAA**

**ORDER**

CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT:

**McMillan LLP**  
Suite 1700, 421 - 7 Avenue S.W.  
Calgary, AB T2P 4K9  
Phone: 403-531-4700  
Fax: 403-531-4720  
Attention : Adam Maerov  
Phone: 403-215-2752  
Email: adam.maerov@mcmillan.ca

Kourtney Rylands  
Phone: 403-355-3326  
Email: kourtney.rylands@mcmillan.ca

File No. 236110

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

December 6, 2019

**NAME OF JUDGE WHO MADE THIS  
ORDER:**

\_\_\_\_\_  
The Honourable Justice Lema

**LOCATION OF HEARING:**

\_\_\_\_\_  
Edmonton Law Courts

UPON the application of Tĥchq Investment Corporation (the “**Applicant**”), AND UPON noting the relief sought in respect of the respondents, Tĥchq Landtran Transport Ltd. (“**TLTL**”), 1456998 Alberta Ltd., (the “**General Partner**”), 1456982 Alberta Ltd. (the “**Limited Partner**”, collectively with the General Partner, and TLTL, the “**Debtors**”) and Ventures West Transport LP (“**Ventures West**”); AND UPON having read the Originating Application, the Affidavit of Mark Brajer sworn November 25, 2019 (the “**Brajer Affidavit**”), filed; and the Affidavits of Service, filed; AND UPON reading the consent of MNP Ltd. to act as Monitor; AND UPON being advised that the secured creditors who are likely to be affected by the charge created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order; AND UPON hearing counsel for the Applicant, counsel for the proposed Monitor, MNP Ltd., counsel for the Canadian Imperial Bank of Commerce (“**CIBC**”) and such other counsel as were present; AND UPON reading the Pre-Filing Report of MNP Ltd. And the First Report of the Monitor; **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

#### **EFFECT ON INITIAL ORDER**

2. This Order amends and restates the initial order granted in the within proceedings on November 29, 2019, by the Honourable Justice Graesser.

#### **APPLICATION**

3. The Debtors are companies to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies. Although not a Debtor, Ventures West shall have the same benefit and the same protections and authorizations provided to the Debtors by this Order.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. The Debtors and Ventures West shall:
  - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and the Property; and
  - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably

necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Debtors and Ventures West shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to, on or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the reasonable fees and disbursements of any Assistants retained or employed by the Debtors or Ventures West in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.
  
6. Except as otherwise provided to the contrary herein, the Debtors and Ventures West shall be entitled but not required to pay all reasonable expenses incurred by the Debtors and Ventures West in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Debtors or Ventures West following the date of this Order.
  
7. The Debtors and Ventures West shall remit, in accordance with legal requirements, or pay:
  - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance,
    - (ii) Canada Pension Plan,
    - (iii) Quebec Pension Plan, and
    - (iv) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
  - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors or Ventures West in connection with the sale of goods and services by the Debtors or Ventures West, but only where such Sales Taxes are accrued or collected after the date

of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Debtors or Ventures West.
8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Debtors and Ventures West may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Debtors or Ventures West from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
9. Except as specifically permitted in this Order, the Debtors and Ventures West are hereby directed, until further order of this Court:
- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtors or Ventures West to any of their creditors as of the date of this Order;
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. The Debtors and Ventures West shall, subject to such requirements as are imposed by the CCAA, have the right to:
- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Debtors or Ventures West (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Debtors or Ventures West and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Debtors or Ventures West deem appropriate, in accordance with section 32 of the CCAA; and

(d) implement the Sale Process (as defined below) in accordance with this Order,

all of the foregoing to permit the Debtors and Venture West to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. The Debtors and Ventures West shall provide each of the relevant landlords with notice of the Debtors’ or Ventures West’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Debtors’ or Ventures West’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Debtors and Ventures West or by further order of this Court upon application by the Debtors and Ventures West on at least two (2) days’ notice to such landlord and any such secured creditors. If the Debtors or Ventures West disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Debtors’ and Ventures West’s claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtors and Ventures West, and the Monitor 24 hours’ prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtors in respect of such lease or leased premises and such landlord shall be entitled to notify the Debtors of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **NO PROCEEDINGS AGAINST THE DEBTORS, VENTURES WEST OR THE PROPERTY**

13. Until and including February 14, 2020 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Debtors, Ventures West or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or Ventures West or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court. Notwithstanding anything else contained in this Order, nothing in this Order limits any rights or remedies which may be available to CIBC and nothing in this Order shall affect the rights or remedies of CIBC in connection with any indebtedness, liability, or obligation of any kind or nature incurred by the Applicant. Notwithstanding the foregoing, the security held by CIBC shall be subject to the priority given to the Administration Charge (as defined below) by paragraph 29 of this Order.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Debtors, Ventures West or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Debtors or Ventures West to carry on any business that the Debtors or Ventures West are not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or
  - (e) exempt the Debtors or Ventures West from compliance with statutory or regulatory provisions relating to health, safety or the environment.
15. Nothing in this Order shall prevent any party from taking an action against the Debtors or Ventures West where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

### **NO INTERFERENCE WITH RIGHTS**

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors or Ventures West, except with the written consent of the Debtors or Ventures West and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

17. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtors or Ventures West, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Debtors or Ventures West

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or Ventures West or exercising any other remedy provided under such agreements or arrangements. The Debtors and Ventures West shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors or Ventures West in accordance with the payment practices of the Debtors or Ventures West, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors or Ventures West and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtors or Ventures West.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 11 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Debtors or Ventures West whereby the directors

or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Debtors or Ventures West, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtors or Ventures West or this Court.

#### **APPOINTMENT OF MONITOR**

20. MNP Ltd. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Debtors and Ventures West with the powers and obligations set out in the CCAA or set forth herein and that the Debtors and Ventures West and each of their shareholders, officers, directors, general partners and Assistants shall advise the Monitor of all material steps taken by the Debtors and Ventures West pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
21. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - (a) monitor the Debtors' and Ventures West's receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Debtors or Ventures West;
  - (c) advise the Debtors and Ventures West in their preparation of the Debtors' and Ventures West's cash flow statements;
  - (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Debtors and Ventures West to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Debtors or Ventures West or to perform its duties arising under this Order;
  - (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
  - (f) perform such other duties as are required by this Order or by this Court from time to time.
22. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed



to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

23. The Monitor shall provide any creditor of the Debtors or Ventures West with information provided by the Debtors or Ventures West in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Debtors or Ventures West is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Debtors or Ventures West may agree.
24. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
25. The Monitor, counsel to the Monitor, counsel to the Applicant and counsel to the Debtors and Ventures West shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Debtors and Ventures West as part of the costs of these proceedings. The Debtors and Ventures West are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and counsel for the Debtors and Ventures West on a regular basis.
26. The Monitor and its legal counsel shall pass their accounts from time to time.
27. The Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the Debtors and Ventures West, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel,

both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 29 hereof.

#### **VALIDITY AND PRIORITY OF ADMINISTRATION CHARGE**

28. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
29. The Administration Charge shall constitute a charge on the Property and subject always to section 34(11) of the CCAA shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.
30. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors and Ventures West shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Administration Charge, unless the Debtors and Ventures West also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge (the “**Chargees**”), or further order of this Court.
31. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Debtors or Ventures West, and notwithstanding any provision to the contrary in any Agreement:
    - (i) the creation of the Administration Charge shall not create or be deemed to constitute a new breach by the Debtors or Ventures West of any Agreement to which they are a party;
    - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

- (iii) the payments made by the Debtors and Ventures West pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

#### **ALLOCATION**

- 32. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge amongst the various assets comprising the Property.

#### **SALE PROCESS**

- 33. The Debtors, Ventures West and the Monitor are hereby authorized and empowered to implement the sale process (“**Sale Process**”) substantially in the form attached to the report of the Monitor filed in these proceedings, and to proceed, carry out, and implement any corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with the proposed Sale Process, and, furthermore, the Debtors, Ventures West and the Monitor are hereby authorized to enter into any resulting agreement(s) or transaction(s) (collectively, the “**Sale Agreements**”) which may arise in connection thereto, as the Debtors, Ventures West and the Monitor determine are necessary or advisable in connection with or in order to complete any or all of the various steps, as contemplated by the Sale Process.
- 34. Nothing herein shall act as authorization or approval of the transfer or vesting of any or all of the Debtors’ or Ventures West’s property, assets, or undertakings under any Sale Agreements, or otherwise. Such transfer and vesting shall be dealt with and shall be subject to further Order of this Court.
- 35. The Debtor, Ventures West and the Monitor are hereby authorized and empowered to apply to this Court to amend, vary, or seek any advice, directions with regard to the Sale Process or with regard to the approval or vesting of any transactions, in connection with the Sale Process.

#### **SERVICE AND NOTICE**

- 36. The Monitor shall (i) without delay, publish in \_\_\_\_\_ a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtors or Ventures West of more than \$1,000; (C) prepare a list showing the names of all employee creditors (and excluding the addresses and estimated amounts of such claims); and (D) prepare a list showing the names and addresses of all other creditors and the estimated amounts of those claims, and make the lists referenced in subsections (ii) (C) and (D) publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

37. Subject to Rules 11.25 and 11.26 this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the Rules of Court.

**GENERAL**

38. The Debtors, Ventures West or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
40. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Debtors, Ventures West, the Business or the Property.
41. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Debtors, Ventures West, the Monitor 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 Debtors and Ventures West and to 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 Debtors, Ventures West and the Monitor and their respective agents in carrying out the terms of this Order.
42. Any interested party (including the Applicant, Debtors, Ventures West and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
43. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

---

Justice of the Court of Queen's Bench of Alberta