

Hfx. No. 507069
Estate No. 51-2743163
Court No. 44783
District of Nova Scotia
Division No. 01-Halifax

SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF ATLANTIC CRANE & MATERIAL
HANDLING LIMITED, LABRADOR CRANES 2005 LIMITED AND LCB RENTALS
LIMITED

**Affidavit of Peter Wong
sworn on October 7, 2021**

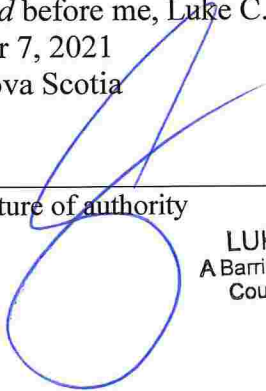
I make oath/affirm and give evidence as follows:

1. I am Peter Wong, Chief Financial Officer of Hercules SLR Inc. (“Hercules”)
2. I have personal knowledge of the evidence sworn to/affirmed in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. Hercules entered into an Asset Purchase Agreement dated September 9, 2021 (the “APA”) with Atlantic Crane & Material Handling Limited, Labrador Cranes 2005 Limited and LCB Rentals Limited (the “Vendors”) to purchase the assets of the Vendors. A true copy of the APA is attached hereto as Exhibit “A”.
5. By Order of this Honourable Court dated September 29, 2021, the APA was approved to proceed.
6. On August 4, 2021 Hercules was provided an inventory balance sheet from the Vendors, a true copy of which is attached hereto as Exhibit “B”.
7. During the week of September 30 to October 1, 2021 Hercules staff attended, along with the Vendors staff at their physical locations to verify the assets listed in the inventory balance sheet. As part of this process an updated inventory sheet was prepared by the Vendor, a true copy of which is attached hereto as Exhibit “C”.

8. During the same week of September 30 to October 1, Hercules Staff, together with the Vendors staff completed a fixed asset count. The resultant count is attached hereto as Exhibit "D"

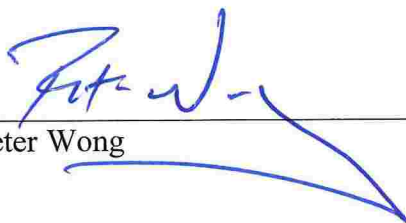
Sworn to/Affirmed before me, Luke C.
Godin on October 7, 2021
at Dartmouth, Nova Scotia

Signature of authority



LUKE C. GODIN
A Barrister of the Supreme
Court of Nova Scotia

Peter Wong



A

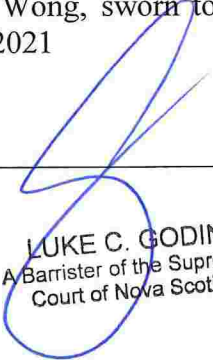
Form 39.09

Exhibit Stamp

No.507069

This is Exhibit "A" referred to in the affidavit of Peter Wong, sworn to before me on October 7, 2021

Signature



LUKE C. GODIN
A Barrister of the Supreme
Court of Nova Scotia

THIS ASSET PURCHASE AGREEMENT made as of the 9th day of September 2021.

BETWEEN:

**ATLANTIC CRANE & MATERIAL HANDLING LIMITED, LABRADOR
CRANES 2005 LIMITED and LCB RENTALS LIMITED**
(collectively the "**Vendors**")

-and-

HERCULES SLR INC.
(the "**Purchaser**")

WHEREAS:

- A. The Vendors carry on the business of the manufacture, sale and service of cranes and crane parts ("the Business") and own assets in connection with the Business;
- B. The Vendors filed a Notice of Intention to Make a Proposal on June 4, 2021, and made application for, and were granted, an extension of the time to make that Proposal pursuant to Division I of the *Bankruptcy and Insolvency Act*, in proceedings commenced and continuing in the Supreme Court of Nova Scotia ("the Court") in Hfx. #507069 (the "Proposal Proceedings"); and
- C. The Vendors have agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendors substantially all of the assets, property and undertaking of and pertaining to the Business, upon the terms and conditions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the respective covenants, agreements, representations, warranties and indemnities of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties agree as follows.

INTERPRETATION

1.1 Defined Terms

Wherever used in this Agreement, unless the context otherwise requires, the following words and terms will have the indicated meanings and grammatical variations of such words and terms will have corresponding meanings:

- (a) "**ACMHL**" means Atlantic Crane & Material Handling Limited;
- (b) "**Agreement**" means this Asset Purchase Agreement and all Schedules attached to and forming part hereof, all schedules incorporated by reference, and all amendments made hereto by written agreement among the parties and approved by the Trustee or the Court, as the circumstance may require;
- (c) "**Approval and Vesting Order**" means that sale approval and vesting order contemplated in the Bidding Procedures Order;
- (d) "**BIA**" means the *Bankruptcy and Insolvency Act*;
- (e) "**BDC**" means Business Development Bank of Canada;
- (f) "**Business Day**" means any day, other than a Saturday or a Sunday, or statutory holiday in Nova Scotia;
- (g) "**Business Records**" means all books, records and files, whether electronic, digital, paper or otherwise, with respect to the Business;
- (h) "**Closing**" means completion of the purchase and sale of the Purchased Assets contemplated by this Agreement, the Bidding Procedures Order and the Approval and Vesting Order;
- (i) "**Closing Date**" means any date within five (5) business days after satisfaction of all the conditions precedent herein, which shall include the grant by the Court of an Approval and Vesting Order;
- (j) "**Confidential Information**" has the meaning as set out in Section 1.40;
- (k) "**Disclosing Party**" has the meaning as set out in Section 1.40;
- (l) "**Due Diligence Date**" means 10 Business Days after the granting of the Bidding Procedures Order;
- (m) "**Employees**" means the people currently employed in connection with the Business, as more particularly described in Schedule "B" attached hereto;
- (n) "**Encumbrance**" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim,

exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, privilege or any agreement to create any of the foregoing;

- (o) **"Equipment"** means all the equipment, machinery and personal property used in connection with the Business, but does not include any equipment, machinery and personal property that are Excluded Assets;
- (p) **"ETA"** means Part IX of the *Excise Tax Act* (Canada), as amended from time to time;
- (q) **"Excluded Assets"** means those assets listed in Schedule "E" hereto;
- (r) **"Financial Statements"** means the financial statements for each of the Vendors for their fiscal years ending in 2019;
- (s) **"Goodwill"** means all goodwill of the Business, business or trade names for the Business, telephone numbers and other communication numbers and addresses of the Business, supplier contracts, Business Records and other items incidental to the Business;
- (t) **"Governmental Charges"** has the meaning as set out in Section 1.25;
- (u) **"HST"** means all taxes payable under the ETA or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;
- (v) **"Inventory"** means the all of the inventory of the Business, wheresoever situate;
- (w) **"LCB"** means LCB Rentals Limited;
- (x) **"LCL"** means Labrador Cranes 2005 Limited;
- (y) **"Licences"** means all licences, permits, approval, consents, certificates, registrations, authorizations (whether governmental regulatory or otherwise) held by or granted to the Vendors in connection with the Business;
- (z) **"Permitted Encumbrance"** means the mortgage of real property in favour of BDC referred to in Schedule "D";
- (aa) **"Premises"** means the lands described in Schedule "G", and the buildings and structures on the said lands;
- (bb) **"Purchase Price"** has the meaning as set out in Section 1.16;
- (cc) **"Purchased Assets"** means the properties, assets, interests and rights of the Vendors constituting the Business or used therein that are listed below and that are not

Excluded Assets:

- (i) the Equipment;
 - (ii) accounts receivable;
 - (iii) the Goodwill;
 - (iv) the Real Property;
 - (v) assignable contracts with customers;
 - (vi) Inventory; and
 - (vii) all rights and interest under or pursuant to all warranties, representations and guarantees expressed, implied or otherwise of or made by suppliers or others in connection with the Equipment and Inventory;
- (dd) "**Purchaser**" has the meaning given to it on the first page of this Agreement;
- (ee) "**Purchaser's Solicitors**" means BOYNECLARKE LLP, of Dartmouth, Nova Scotia, solicitors for the Purchaser;
- (ff) "**Real Property**" means the real property described in Schedule "D";
- (gg) "**Tax Act**" means the *Income Tax Act* (Canada), as amended from time to time;
- (hh) "**Trustee**" means MNP Limited;
- (ii) "**Vendors**" has the meaning given to it on the first page of this Agreement;
- (jj) "**Vendors' Solicitor**" means BOYNECLARKE LLP, of Dartmouth, Nova Scotia, solicitor for the Vendors;

1.2 Currency

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.

1.3 Sections and Headings

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement or any provision hereof. Unless otherwise indicated, any reference in this Agreement to an Article, Section, Paragraph or Schedule refers to the specified Article, Section or Paragraph of, or Schedule to, this Agreement. The terms "this Agreement", "hereof", "hereunder", and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto.

1.4 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

1.5 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

1.6 Bidding Procedures Order

The provisions of the Bidding Procedures Order, including the Bidding Procedures attached as Schedule "A" thereto, shall be incorporated into this Agreement and apply, *mutatis mutandis*, as the circumstances require.

1.7 Time of Essence

Time shall be of the essence of this Agreement.

1.8 Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein, and the parties hereby irrevocably attorn to the jurisdiction of the Courts of the Province of Nova Scotia in respect of all matters and actions arising under this Agreement.

1.9 Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding on the parties hereto, their respective heirs, executors, legal personal representatives, successors and permitted assigns, as the case may be. The Purchaser may assign any of its rights or obligations hereunder without the prior written consent of the Vendors. This right is exclusive to the Purchaser hereunder, and for the purposes of clarity, no Qualified Bidder (as such is defined in the Bidding Procedures Order) may assign any of rights or obligations as a Qualified Bidder without the prior written consent of the Vendors and the Trustee.

1.10 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity,

legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

1.11 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on any party unless provided for by virtue of the terms of the Bidding Procedures Order and consented to in writing by such party and the Trustee. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

1.12 Schedules

The following Schedules are attached to or incorporated by reference and form part of this Agreement:

Schedule "A"	Bidding Procedures Order
Schedule "B"	Employees
Schedule "B1"	Employee Benefit Provisions
Schedule "C"	Equipment
Schedule "D"	Real Property with Permitted Encumbrance
Schedule "E"	Excluded Assets
Schedule "F"	Allocation of Purchase Price
Schedule "G"	Premises occupied by the Vendors

PURCHASE AND SALE OF ASSETS

1.13 Agreement to Sell and Purchase

The Vendors agree to sell, assign and transfer to the Purchaser and the Purchaser agrees to take and purchase as at the Closing Date, the Purchased Assets, subject to the terms and conditions of this Agreement and the Stalking Horse and Bidding Procedures Order obtained from the Court.

1.14 Excluded Assets

There shall be specifically excluded from the assets being purchased and sold hereunder, all of the assets of the Vendors, whether associated with the Business or not, that are not Purchased Assets, as described in Schedule "E" hereto, provided that the Purchaser may elect upon reaching agreement with the creditor having security over any Excluded Asset to assume the Vendor's obligations thereunder and take possession of that Excluded Asset.

1.15 Liabilities

With the exception of the monies due under the mortgage of real property set out in Schedule "D" hereto, and those security interests, charges or other restrictions provided for in the Approval and

Vesting Order, the Purchaser shall not, by this Agreement, be deemed to have accepted or assumed any obligation or responsibility for payment of any debt, obligation, liability, claim, or demand of whatsoever nature of or against the Vendors arising before or after the Closing Date.

PURCHASE PRICE

1.16 Purchase Price

The purchase price payable by the Purchaser to the Vendors for the Purchased Assets (the "**Purchase Price**") is the sum of One Million Three Hundred and Fifty-Seven Thousand Dollars (\$1,357,000.00), plus payment to BDC or assumption of those sums due to BDC and secured by the Permitted Encumbrance described in Scheduled "D" hereto. The Purchase Price is based on the value of the Purchased Assets as at August 4, 2021. The Purchase Price shall be adjusted at Closing in the event of any decrease in value of the Purchased Assets between August 4, 2021 and Closing.

11.7 Allocation of Purchase Price

The Purchase Price shall be allocated in accordance with the provisions of Schedule "F". The Vendors and the Purchaser agree to report the purchase and sale of the Purchased Assets in any returns required to be filed under the Tax Act and other taxation statutes in accordance with the provisions of Schedule "F".

1.18 Payment of Purchase Price

The Purchase Price shall be paid by the Purchaser at the Closing by certified cheque or trust cheque to the Trustee.

1.19 Harmonized Sales Tax Election

Each of the Vendors and the Purchaser shall, on or before the Closing Date jointly execute elections, in prescribed form and containing the prescribed information, to have s.167.1 of the ETA apply to the sale and purchase of the Purchased Assets so that no HST will be payable. The Purchaser shall file the election with Canada Revenue Agency and provide the Vendors with written confirmation of same.

REPRESENTATIONS AND WARRANTIES OF THE VENDORS

The Vendors jointly and severally represent and warrant to the Purchaser as follows and acknowledge that the Purchaser is relying on such representations and warranties in connection with the purchase of the Purchased Assets by the Purchaser:

1.20 Corporate Authority and Binding Obligation

Subject to the terms of the Bidding Procedures Order, the Vendors have good right, full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Purchased Assets to the Purchaser in the manner contemplated herein and to perform all of their obligations under this Agreement. The Vendors and their board of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, this Agreement and the purchase of the Purchased Assets by the Purchaser from the Vendors. This Agreement is a legal, valid and binding obligation of the Vendors, enforceable against them in accordance with the terms hereof, subject to:

- (i) bankruptcy, insolvency, and other laws relating to the enforcement of creditors' rights generally,
- (ii) another Qualified Bidder (as such is defined in the Bidding Procedures Order) being approved by the Court as the purchaser of the Business;
- (iii) the Purchaser complying with the requirements of the Bidding Procedures Order and the Approval and Vesting Order;
- (iv) the fact that equitable remedies, including the remedy of specific performance, may only be granted in the discretion of a court.

1.21 Contractual and Regulatory Approvals

The Vendors are not under any obligation, contractual or otherwise, to request or obtain the consent of any person, other than the Court, and no permits, licenses, certifications, authorizations or approvals of, or notifications to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Vendors in connection with the execution, delivery or performance by the Vendors of this Agreement or the completion of any of the transactions contemplated herein, except for the obtaining of the Approval and Vesting Order.

1.22 No Other Agreements to Purchase

At the time of execution of this Agreement, no person other than the Purchaser has any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for the purchase or acquisition from the Vendors of any of the Purchased Assets.

1.23 No Violation

The execution and delivery of this Agreement by the Vendors and the consummation of the transactions provided for herein will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination or acceleration of any obligation of the Vendors under:

- (a) any provision of the memorandum or articles of association or resolutions of the board of directors or shareholders of the Vendors;
- (b) any licence, permit, approval, consent or authorization held by the Vendors or that is necessary to the operation of the Business; or
- (c) any applicable law, statute, ordinance, regulation or rule.

1.24 Condition of Purchased Assets

The Equipment forming part of the Purchased Assets is in good operating condition, and is in a state of good repair and maintenance, ordinary wear and tear excepted. The Purchased Assets are sufficient to carry on the Business in the manner in which the Business is now being conducted by the Vendors.

1.25 Taxes

For purposes of this Agreement, the term "**Governmental Charges**" means and includes all taxes, customs, duties, rates, levies, assessments, reassessments and other charges, together with all penalties, interest and fines with respect thereto, payable to any federal, provincial, municipal, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign.

There are no actions, suits, proceedings, investigations, enquiries or claims now pending or made or, to the best of the knowledge of the Vendors, threatened against the Vendors in respect of Governmental Charges.

ACMHL's HST registration number is _____ **RT0001**; LCB's HST registration number is _____ **RT0001**; LCL's HST registration number is _____ **RT0001**.

1.26 Residency

The Vendors are residents of Canada for the purposes of the *Income Tax Act*.

1.27 Full Disclosure

Neither this Agreement, nor any certificate, report, statement or other document furnished by the Vendors in connection with the negotiation of this Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading, and without limiting the generality of the foregoing, the Vendors have not failed to disclose to the Purchaser, any fact or information that would be material to a purchaser of the Purchased Assets. There has been no event, transaction or information that has come to the attention of the Vendors that has not been disclosed to the Purchaser in writing that could reasonably be expected to have a material adverse effect on the assets, business, earnings, prospects, properties or condition (financial or otherwise) of the Business.

1.28 Employees

Schedule "B" contains the name and job title of each of the Employees of the Business. There are no complaints, claims or charges outstanding, or anticipated, nor are there any orders, decisions, directions or convictions currently registered or outstanding by any tribunal or agency against or in respect of the Vendors under or in respect of any employment legislation. No Employees of the Vendors are in receipt of benefits under the *Workers' Compensation Act* (Nova Scotia). The Vendors are in compliance with the *Labour Standards Code* (Nova Scotia) and other employment legislation governing the Employees. There are no unions, collective agreements, pensions, employee benefit plans, deferred profit-sharing agreements, or similar agreements, with respect to any of the Employees, other than the employee benefit provisions set out in Schedule B1 and Vendor represents and warrants that all Employee pensions and benefits are fully funded and in good standing.

1.29 Employment Contracts

The Vendors are not a party to any written employment, service or pension agreement with any of the Employees.

1.30 Licences

All Licences are valid, subsisting and in good standing and the Vendors are not in default or breach of any Licence and, to the knowledge of the Vendors, no proceeding is pending or threatened to revoke or limit any Licence.

1.31 No Orders

There are no outstanding orders, notices or similar requirements relating to the Vendors or the Business issued by any building, environmental, fire, health, labour or police authorities or from any other federal, provincial or municipal authority and there are no matters under discussion with any such authorities relating to orders, notices or similar requirements.

1.32 Books and Records

The books and records of the Vendors which the Purchaser is entitled to inspect as part of its due diligence prior to Closing, are, in all material respects, in accordance with generally accepted accounting principles.

1.33 Premises

There are no physical problems or disrepair of the Premises or services to the Premises which may affect the ability of the Purchaser to carry on the Business at the Premises.

1.34 Representations and Warranties True and Accurate on Closing

The representations and warranties of the Vendors contained herein shall be deemed to have been made again on Closing and shall then be true and correct.

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Vendors as follows and acknowledges and confirms that the Vendors are relying on such representations and warranties in connection with the sale of the Purchased Assets:

1.35 Authorization

This Agreement has been duly authorized, executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Vendors in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.

1.36 No Violation

The execution and delivery of this Agreement by the Purchaser and the consummation of the transactions herein provided for will not result in the violation of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Purchaser under:

- (a) the memorandum or articles of association of the Purchaser;
- (b) any resolutions of the board of directors of the Purchaser;
- (c) any contract to which the Purchaser is a party or by which it is bound;
- (d) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the Purchaser; or
- (e) any applicable law, statute, ordinance, regulation or rule.

1.37 Consents and Approvals

There is no requirement for the Purchaser to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.

1.38 Residency

The Purchaser will be a resident of Canada for the purposes of the *Income Tax Act*.

NON-WAIVER; SURVIVAL

1.39 Non-Waiver

No investigations made by or on behalf of the Purchaser at any time shall have the effect of waiving, diminishing the scope or otherwise affecting any representation or warranty made by the Vendors in or pursuant to this Agreement. No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

COVENANTS

1.40 Access to Assets and Records

The Vendors (the "**Disclosing Party**") shall forthwith make available to the Purchaser and its authorized representatives (the "**Receiving Party**") and provide copies thereof of all title documents, computer records, licences, orders, permits, books and records and such other documents, information and data relating to the Business as the Purchaser may request ("**Confidential Information**"). At the request of the Purchaser, the Vendors shall execute such consents, authorizations and directions as may be necessary to permit any inspection of any of such assets or to enable such party or its authorized representative to obtain full access to all files and records relating to the Business maintained by governmental or other public authorities. As requested, each party shall co-operate with the other party in arranging any such meetings as reasonably requested with:

- (a) Employees of the Vendors;
- (b) suppliers or others who have or have had a business relationship with the Business; and
- (c) any other persons engaged or previously engaged to provide services to the Vendors who have knowledge of matters relating to the Business or the Purchased Assets.

The exercise of any rights of inspection by or on behalf of the Purchaser under this Section 1.40 shall not mitigate or otherwise affect any of the representations and warranties of the Vendors hereunder, which shall continue in full force and effect.

1.41 Confidential Information

In the event that this Agreement is terminated for any reason, the Purchaser shall not use any Confidential Information to the detriment or competitive disadvantage of the Vendors or its successors and assigns and shall not divulge any Confidential Information to any third party, with the exception of the Purchaser's professional advisors, and the Purchaser shall return all documents received from the Vendors or their representatives.

CONDITIONS OF CLOSING

1.42 Conditions of Closing in Favour of the Purchaser

Completion of the acquisition of the Purchased Assets by the Purchaser is subject to fulfillment and satisfaction of the following conditions, which are for the exclusive benefit of the Purchaser, which are to be performed or fulfilled or satisfied at or prior to the Closing Date, or by such other date as may be indicated.

- (a) **Representations, Warranties and Covenants** - all of the representations and warranties of the Vendors contained in this Agreement shall be true and correct as of the date of this Agreement and shall be true and correct in all respects at the Closing as if made on the Closing Date and all terms, covenants and conditions of this Agreement to be complied with or performed by the Vendors on or before the Closing Date shall have been complied with or performed, and a certificate of an officer of the Vendors, dated as of the Closing Date, to that effect shall have been delivered to the Purchaser, such certificate to be in form and substance satisfactory to the Purchaser acting reasonably.
- (b) **Regulatory and Third Party Consents** - on or before the Due Diligence Date, there shall have been obtained from all appropriate federal, provincial, municipal or other governmental or administrative bodies and other third parties such licences, permits, consents, approvals, certificates, registrations and authorizations as are required to be obtained by the Purchaser to permit the change of ownership of the Purchased Assets contemplated hereby, and, without detracting from the foregoing, a consent from the landlord of 70 Neptune Crescent, Dartmouth, Nova Scotia, to the assignment of the existing lease to the Purchaser.
- (c) **Lease of Equipment** - Purchaser will assume all existing vehicle leases. With respect to other Leased Equipment which the Purchaser elects to retain, on or before the Closing Date, leases for said leased equipment shall have been assumed by the Purchaser, or new leases entered into satisfactory to the Purchaser.
- (d) **Due Diligence** - on or before the Due Diligence Date, the Purchaser shall be satisfied, acting reasonably, with all due diligence and other inquiries made in respect of the Company and the Vendors;
- (e) **No Action or Proceeding** - no legal or regulatory action or proceeding shall be pending or threatened by any person to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby.
- (f) **Transfer of Purchased Assets** - all necessary steps and proceedings shall have been taken to permit the Purchased Assets to be duly and regularly transferred to and registered in the name of the Purchaser and all Purchased Assets shall be properly installed, in good working order as of the Closing Date.
- (g) **Legal Matters** - all actions, proceedings, instruments and documents required to

implement this Agreement, or instrumental thereto, and all legal matters relating to the purchase of the Purchased Assets, shall have been approved as to form and legality by the Purchaser's solicitors.

- (h) **Discharge** - on or before the Closing Date, the Vendors shall have obtained the Approval and Vesting Order vesting the Purchased Assets in the Purchaser free and clear of all Encumbrances upon payment of the Purchase Price.
- (i) **Employees** - the employment of all Employees, including any associated employment benefits, shall have been terminated on or prior to the Closing Date by the Vendors; and the Purchaser shall offer employment to the existing Employees of the Business upon terms and conditions and with benefits that are no less favourable in the aggregate than those applicable to their current employment with the Vendors. The Purchaser shall have no liability or obligation in respect of any employee who does not accept the offer of employment by the Purchaser. Any employee who accepts employment with the Purchaser will receive credit for their years of service with the Vendor prior to the Closing Date and for the purposes of calculating post-Closing vacation entitlement.
- (j) **Delivery of Documents**- all items listed in Section 1.45 shall have been delivered.
- (k) **GST 44** - the Vendors and the Purchaser shall complete Forms GST 44 to elect under s. 167 of the ETA.

If any of the conditions contained in this Section 1.42 have not been performed or fulfilled on or before the Closing Date or by such earlier date as may be indicated, to the satisfaction of the Purchaser, the Purchaser may, by notice to the Vendors, terminate this Agreement.

1.43 Conditions of Closing in Favour of the Vendors

Completion of the sale of the Purchased Assets by the Vendors is subject to fulfillment and satisfaction of the following conditions which are for the exclusive benefit of the Vendors, which are to be performed or fulfilled or satisfied at or prior to the time of Closing.

- (a) **Payment of Purchase Price** - the Purchase Price required to be paid by the Purchaser to the Trustee at the Closing shall have been paid in full.
- (b) The Permitted Encumbrance in favour of BDC shall have been paid by or assumed by the Vendor, with the approval of BDC.
- (c) **Representations, Warranties and Covenants** - all of the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the date of this Agreement and shall be true and correct in all respects at the Closing as if made on the Closing Date and all terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed, and a certificate of an officer of the Purchaser, dated as of the Closing Date, to that effect shall have been delivered to the Vendors, such certificate to be in form and substance satisfactory to the Vendors acting reasonably.

- (d) **Delivery of Documents** - all items listed in Section 1.46 shall have been delivered.

If any of the conditions contained in this Section 1.43 have not been performed or fulfilled at or prior to the time of Closing to the satisfaction of the Vendors, the Vendors may, by notice to the Purchaser, terminate this Agreement.

CLOSING DATE AND TRANSFER OF POSSESSION

1.44 Place of Closing

Completion of the purchase and sale of the Purchased Assets will take place by exchange of documents between the Vendors' Solicitor and the Purchaser's Solicitors, or by such other method as mutually agreed to by the Purchaser and the Vendors.

1.45 Vendors' Deliverables

On the Closing Date the Vendors shall deliver or cause to be delivered to the Purchaser the following:

- (a) such deeds, assignments, bills of sale, transfers, conveyances, and other documents as the Purchaser's Solicitors may reasonably require for the purpose of vesting in the Purchaser good title to the Purchased Assets, and, in particular, the Approval and Vesting Order, vesting the Purchased Assets in the Purchaser free and clear of all mortgages, charges, liens, Encumbrances and other third party rights or interests, with the exception of the Permitted Encumbrance;
- (b) a copy, certified by a senior officer of the Vendors, as of the Closing Date, of the resolutions of the directors of the Vendors authorizing the transfer of the Purchased Assets to the Purchaser;
- (c) actual possession of the Purchased Assets to the Purchaser, together with originals or copies of all books and records as may be necessary or desirable in the opinion of the Purchaser to enable the Purchaser to carry on the Business without interruption.
- (d) a certificate of an officer of the Vendors certifying that the Vendors' representations, warranties and covenants as stated in this Agreement are true and correct in all respects at the Closing as if made on the Closing Date;
- (e) a receipt for the Purchase Price; and
- (f) such other documents as are required to convey the Purchased Assets from the Vendors to the Purchaser on the Closing Date.

1.46 Purchaser's Deliverables

On the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendors the following:

- (a) a copy, certified by a senior officer of the Purchaser as of the Closing Date, of the directors' resolution authorizing the execution, delivery and performance by the Purchaser of this Agreement; and
- (b) a certificate of an officer of the Purchaser certifying that the Purchaser's representations, warranties and covenants as stated in this Agreement are true and correct in all respects at the Closing as if made on the Closing Date.

On the Closing Date, the Purchaser shall deliver or cause to be delivered to the Trustee the a certified cheque, bank draft or trust cheque of the Purchaser's Solicitors for the full amount of the Purchase Price payable under Section 1.16.

1.47 Further Assurances

Each party to this Agreement covenants and agrees that it will, at all times after the Closing Date, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

MISCELLANEOUS

1.48 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopy or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

To: the Vendors at:

BoyneClarke LLP
99 Wyse Road, Suite 600
PO Box 876
Dartmouth, NS
B2Y3Z5

Attention Tim Hill, Q.C.

Telephone: (902) 469-9500
Facsimile: (902) 463-7500
Email: thill@boyneclarke.ca

To: the Purchaser at:

BoyneClarke LLP
99 Wyse Road, Suite 600
PO Box 876
Dartmouth, NS
B2Y3Z5

Attention: Christene Hirschfeld, Q.C.

Telephone: (902) 469-9500
Facsimile: (902) 463-7500
Email: chirschfeld@boyneclarke.ca

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. In the event that the receiving party's electronic communication equipment is not functioning at the time of transmittal, the notice or other communication will be served by courier.

Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 1.48.

1.49 Best Efforts

The parties acknowledge and agree that, for all purposes of this Agreement, an obligation on the part of either party to use its best efforts to obtain any waiver, consent, approval, permit, licence or other document shall not require such party to make any payment to any person for the purpose of procuring the same, other than payments for amounts due and payable to such person, payments for incidental expenses incurred by such person and payments required by any applicable law or regulation.

1.50 Fees

Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

1.51 Counterparts

This Agreement may be executed by facsimile signature and in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF the parties have properly executed this Agreement all as of the day and year first above wr

SIGNED, SEALED AND DELIVERED in
the presence of:

**ATLANTIC CRANE & MATERIAL
HANDLING LIMITED**

Witness

Per: _____
Jack Miner - President

LABRADOR CRANES 2005 LIMITED

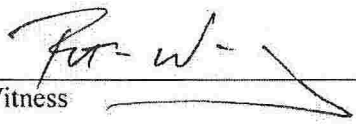
Witness

Per: _____
Jack Miner - President

LCB RENTALS LIMITED

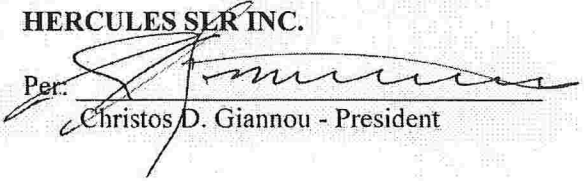
Witness

Per: _____
Jack Miner – Senior Vice-President



Witness

HERCULES SLR INC.

Per: 
Christos D. Giannou - President

SCHEDULE A'

2021

Hfx. No. 507069
Estate No. 51-2743163
Court No. 44783
District of Nova Scotia
Division No. 01-Halifax

**SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY & INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
ATLANTIC CRANE & MATERIAL HANDLING LIMITED, LABRADOR
CRANES 2005 LIMITED and LCB RENTALS LIMITED**

Stalking Horse and Bidding Procedures Order

UPON MOTION OF Atlantic Crane & Material Handling Limited, Labrador Cranes 2005 Limited, and LCB Rentals Limited (the "Applicants") for an order approving the Stalking Horse Asset Purchase Agreement and related sales process;

AND UPON READING the affidavit of Jack Miner sworn August 6, 2021, the Second Report of MNP Limited., in its capacity as Proposal Trustee (the "Trustee"), dated August 6, 2021 ("the Trustee's Report") and the exhibits thereto, and on hearing the submissions of counsel for the Applicants, the Trustee, and those for the secured creditors as appeared:

IT IS ORDERED THAT:

Service

1. The time for service of the Notice of Motion, the Trustee's Report and the other materials filed herein is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

Stalking Horse Process

2. The Applicants are hereby authorized and directed, *nunc pro tunc*, to enter into an agreement to sell all or substantially all of their assets, property and undertakings (the

"Purchased Assets") to Russell Industries Corp. (the "Stalking Horse Bidder"), substantially in the form of the agreement attached as Appendix "B" to the Trustee's Report (the "Stalking Horse Asset Purchase Agreement"), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (defined below) in accordance with the Bidding Procedures (defined below).

3. The bidding procedures described in the Trustee' Report and attached hereto as Schedule "A" (the "Bidding Procedures") and the sale process and auction described therein (collectively, the "Stalking Horse Process") be and are hereby approved and the Trustee is hereby authorized and directed to conduct the Stalking Horse Process.
4. In connection with the Stalking Horse Process and pursuant to section 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Applicants and/or the Trustee may disclose personal information of identifiable individuals to prospective bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Applicants and/or the Trustee or in the alternative shall destroy all such information and certify such destruction to the Applicants and/or the Trustee.
5. The Trustee shall provide to every party that has contacted the Trustee or has otherwise and known to the Trustee or the Applicants expressed an interest in purchasing the Business, as defined in the Stalking Horse Asset Purchase Agreement, a copy of this Order and a copy of the Stalking Horse Asset Purchase Agreement.
6. The auction of the Purchased Assets shall take place, if necessary, on September 16, 2021, as provided for in paragraph 17 of the Bidding Procedures.
7. Where, pursuant to the terms of this Order and the Bidding Procedures provided for herein, a party other than the Stalking Horse Bidder ultimately purchases the Business, the Applicants shall pay to the Stalking Horse Bidder a break fee of \$50,000.00, to compensate the Stalking Horse Bidder for its costs and its management time, and the payment of said break fee shall stand in priority to any Encumbrance as defined in the Stalking Horse Asset Purchase Agreement.

Issued August , 2021

Deputy Registrar

Schedule A - Bidding Procedures

Bidding Procedures

1. Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the sale (the "Sale") of the assets, property and undertakings (the "Purchased Assets") of Atlantic Crane & Material Handling Limited, Labrador Cranes 2005 Limited, and LCB Rentals Limited (the "Applicants") by the Applicants.
2. On August 19, 2021, the Court issued an order (the "Bidding Procedures Order") approving and accepting for the purpose of conducting the Stalking Horse Process in accordance with these Bidding Procedures that certain asset purchase agreement dated August 5, 2021 (the "Stalking Horse Asset Purchase Agreement" or "Stalking Horse Bid") between the Applicants and Russell Industries Corp., or a company to be incorporated, or its assignee (the "Stalking Horse Bidder"), and approving these Bidding Procedures.
3. All amounts specified herein are in Canadian dollars.
4. Within five (5) business days following the Auction (defined below), the Applicants shall bring a motion (the "Sale Approval Motion") seeking the granting of an order by the Court authorizing and approving the Sale of the Purchased Assets to the Successful Bidder(s) (such order, as approved, the "Approval and Vesting Order").

Assets to Be Sold

5. The Applicants, in consultation with MNP Limited (the "Trustee") in its capacity as the Trustee of the Applicants, are offering for sale all of the Applicants' right, title and interest in and to all of the Purchased Assets and encourage bids for the Purchased Assets, in whole.

Permitted Encumbrances

6. The mortgage of real property made by the LCB Rentals Limited in favour of Business Development Bank of Canada shall be a Permitted Encumbrance, and the sale herein contemplated shall be subject to said mortgage of real property.

The Bidding Process

7. The Applicants, in consultation with the Trustee, shall (i) determine whether any person is a Qualified Bidder, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Purchased Assets (collectively, the "Bidding Process"). The Trustee, in consultation with the Applicants and the secured creditors, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process, provided, however, that such other rules are not inconsistent with any of (i) the provisions of the Stalking Horse Asset Purchase Agreement (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), and (iii) the bid protections granted to the Stalking Horse Bidder herein.

Participation Requirements

8. A "Qualified Bidder" is a potential bidder that the Trustee, in consultation with the Applicants and the secured creditors, determines is likely (based on financial information submitted by the bidder, the availability of financing, experience and other considerations deemed relevant by the Trustee) to be able to consummate a sale if selected as the Successful Bidder (as defined below). Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder.

Due Diligence

9. Any Person that wishes to participate in the Bidding Process must (i) execute a confidentiality agreement in form and substance acceptable to the Trustee and (ii) be a Qualified Bidder. The Trustee shall not be obligated to furnish information of any kind whatsoever to any Person that the Trustee determines not to be a Qualified Bidder. The Trustee will afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence subject to the time frames contemplated by these Bidding Procedures. The Trustee will designate a representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders.

Bid Deadline

10. A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Materials (defined below) to each of (i) the Trustee, MNP Limited, 1801 Hollis Street, Suite 1400, Halifax, NS B3J 3N4, Attention: Eric Findlay; and (ii) counsel to the Applicants, BoyneClarke LLP, 99 Wyse Road, Suite 600, Dartmouth, NS, B2Y 3Z5, Attention: Tim Hill, Q.C., not later than 12:00 p.m. (Nova Scotia time) on September 10, 2021 (the "Bid Deadline"). In the event that a bid is determined to be a Qualified Bid, the Trustee shall deliver a written copy of any such Qualified Bid and the Required Bid Materials to the Stalking Horse Bidder's counsel, Wickwire Holm, 1801 Hollis Street, Suite 300, PO Box 1054, Halifax, Nova Scotia, B3J 2X6, Attention: Marc Dunning.

Bid Requirements

11. All bids must include (unless such requirement is waived by the Trustee, with the concurrence of the Applicants and the secured creditors) (the "Required Bid Materials"):

- (i) A cash purchase price equal to or greater than \$100,000 more than the offer contained in the Stalking Horse Asset Purchase Agreement, (the "Minimum Bid Amount");
- (ii) An acknowledgement that the sale is subject to the Permitted Encumbrance;
- (iii) A letter stating that the bidder's offer is irrevocable until the first business day after the Purchased Assets have been sold pursuant to the closing of the sale or sales thereof approved by the Court;
- (iv) An executed copy of a proposed purchase agreement and a blackline of the Qualified Bidder's proposed purchase agreement reflecting variations from the Stalking Horse Asset Purchase Agreement (the "Marked Agreement"). All Qualified Bids must provide: (a) a commitment to close within five (5) business days after satisfaction of all conditions and a covenant to use commercial best efforts to satisfy all conditions; and (b) the identity of and contact information for the bidder and full disclosure of any affiliates and any debt or equity financing sources involved in such bid;

- (v) A cash deposit in the amount of \$50,000 in the form of a wire transfer, certified cheque or such other form acceptable to the Trustee (the "Bid Deposit"), which shall be placed in an escrow account (the "Escrow Account"). The Escrow Account shall not be subject to any Liens whatsoever of the Applicants' creditors or otherwise, and funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder at the Auction, its Bid Deposit will be applied to the purchase price payable by it under its bid on the closing thereof, and (ii) if the Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it (subject to the other provisions of these Bidding Procedures and the terms of its asset purchase agreement with the Trustee);
- (vi) A representation of the bidder and written evidence that the bidder has a commitment for financing or other evidence of the proposed purchaser's ability to consummate the proposed transaction, including executed copies of any financing agreements, commitments, guarantees of the payment obligations of the proposed purchaser, and which the Trustee, in consultation with the Applicants and the secured creditors, believes to be sufficient to satisfy the bidder's obligations under its proposed bid, including to consummate the transaction contemplated by the proposed agreement submitted by it as provided above;
- (vii) A representation of the bidder and written evidence that the bidder has entered into an agreement with Business Development Bank of Canada to either payout or assume the debt secured by the mortgage of real property being the Permitted Encumbrance, should the bidder be the successful bidder;
- (viii) The bid shall not request or entitle the bidder to any transaction or break up fee, expense reimbursement, termination or similar type of fee or payment and shall include an acknowledgement and representation of the bidder that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased 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 Purchased Assets, title to same, the financial performance of the Purchased Assets, the fitness for use of or the physical condition of the Purchased

Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Stalking Horse Asset Purchase Agreement;

- (ix) The bid shall not contain any due diligence, financing or regulatory contingencies of any kind other than those contained in the Stalking Horse Asset Purchase Agreement, though the bid may be subject to the satisfaction of other specific conditions in all material respects at the Closing Date (defined below);
- (x) The bid shall fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (xi) The bid shall state that the offering party consents to the jurisdiction of the Court;
- (xii) The bid shall include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder;
- (xiii) The bid shall state that the offering party has not acted and will not act in collusion with any other undisclosed party or entity in connection with its bid; and
- (xiv) The bid shall identify with particularity any liabilities being assumed.

12. A bid received from a Qualified Bidder that includes all of the Required Bid Materials and is received by the Bid Deadline is a "Qualified Bid." The Trustee, in consultation with the Applicants and the secured creditors, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the "Lead Bid"). Forthwith after the Bid Deadline, the Trustee, in consultation with the Applicants and the secured creditors, shall determine which Qualified Bid shall be the Lead Bid for the purposes of the Auction. A copy of the Lead Bid will be provided to all Qualified Bidders prior to the Auction Date.

13. Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid.

Credit Bidding

14. None of the bidders shall be permitted to credit bid any indebtedness owed to them by the Applicants in connection with the making of a Qualified Bid or in the conduct of the Auction. If any of the secured creditors or any affiliate thereof (other than the Stalking Horse Bidder) wishes to participate in the Auction, they must qualify as a Qualified Bidder in accordance with these Bidding Procedures and will forfeit any right of consultation with the Trustee provided for herein.

"As Is, Where Is, with All Faults"

15. The sale of the Purchased Assets shall be on an "as is", "where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Trustee or the Applicants or their respective agents, representatives or estates, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Applicants. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased 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 Purchased Assets, title to the Purchased Assets, the financial performance of the Purchased Assets or the physical condition or location of the Purchased Assets or their fitness for use, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Applicants.

Free of Any and All Liens

16. Except as otherwise provided in the Stalking Horse Asset Purchase Agreement or another Successful Bidder's purchase agreement, and subject to mortgage of real property in favour of Business Development Bank of Canada and any other security, charges or other restrictions ("Permitted Encumbrances") which may be defined in the Approval and Vesting

Order, all of the Applicants' right, title and interest in and to the Purchased Assets subject thereto shall be sold free and clear of any and all security, charge or other restriction, other than Permitted Encumbrances as provided for in the Approval and Vesting Order.

The Auction and Auction Procedures

17. If a Qualified Bid (other than that submitted by the Stalking Horse Bidder) or Qualified Bids which, in either case, in the aggregate provide for cash consideration of not less than the Minimum Bid Amount, have been received by the Trustee on or before the Bid Deadline, the Trustee shall conduct an auction (the "Auction") with respect to all of the Purchased Assets, with the Lead Bid as the starting bid for the Auction. The Auction shall be conducted at the offices of Trustee, MNP Limited, 1801 Hollis Street, Suite 1400, Halifax, NS B3J 3N4 (the "Auction Site") at 11:00 a.m. (Nova Scotia time) on September 16, 2021 (the "Auction Date"), or such other place and time as the Trustee shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Prior to moving the Auction Date, the Trustee shall consult with the Stalking Horse Bidder and the Applicants and the secured creditors.
18. Except as otherwise provided herein, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Trustee determines is relevant, the Trustee, in consultation with the Applicants and the secured creditors, may conduct the Auction in any manner that it determines will achieve the maximum value for the Purchased Assets, provided that all Qualified Bidders that have timely submitted a Qualified Bid shall be entitled to be present during each round of bidding, the identity of each such Qualified Bidder shall be disclosed to all other Qualified Bidders, and all material terms of each Qualified Bid and each subsequent bid made by each such Qualified Bidder shall be disclosed to all other Qualified Bidders. The Trustee, in consultation with the Applicants and the secured creditors also may set opening bid amounts in each round of bidding as the Trustee determines to be appropriate.
19. If Qualified Bidders submit Qualified Bids, then the Trustee, in consultation with the Applicants and the secured creditors, shall (i) promptly following the Bid Deadline, review each Qualified Bid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of

consummating the sale as contemplated in the Stalking Horse and Bidding Procedures Order and the Bidding Procedures, and (ii) as soon as practicable after the conclusion of the Auction, identify the best offer for the Purchased Assets (to the extent any such bid is acceptable to the Trustee, in consultation with the Applicants and the secured creditors, a "Successful Bid" and the bidder or bidders making such bid, the "Successful Bidder"). At the hearing on the Sale Approval Motion, the Trustee will present the Successful Bid to the Court for approval. The Trustee reserves all rights not to submit any bid which is not acceptable to the Trustee for approval by the Court. The Trustee acknowledges that the Stalking Horse Bid is a Qualified Bid and shall be submitted to the Court for approval in the event that there is no other Successful Bid. Except as otherwise provided herein or as restricted by the Stalking Horse Asset Purchase Agreement, the Trustee upon consultation with the Applicants, may adopt rules for bidding at the Auction that, in its business judgment, will better promote the goals of the bidding process or any order of the Court entered in connection herewith.

20. If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline or the Auction Date, then the Trustee shall cancel the Auction (in which case, the Successful Bid shall be the Stalking Horse Bid, and the Successful Bidder shall be the Stalking Horse Bidder).

Overbid Amount; Minimum Bid Increment

21. There shall be an overbid amount that a Qualified Bidder must bid to exceed the Stalking Horse Bid ("Overbid Amount"), and that amount shall be at least \$100,000 for all bids made by Qualified Bidders. At the Auction, all subsequent bids shall not be less than \$25,000 in excess of the preceding bid, unless modified by the Trustee.

Acceptance of Qualified Bids

22. The sale of the Purchased Assets to any Successful Bidder by the Applicants is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Sale Approval Motion. The Applicants' presentation of any Qualified Bid to the Court for approval does not obligate the Applicants to close the transaction contemplated by such Qualified Bid until the Court approves the bid. The Applicants will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Sale Approval Motion.

Sale Approval Motion Hearing

23. The Sale Approval Motion shall be made on or before September *, 2021. The Applicants, in consultation with the Trustee, in the exercise of its business judgment, in consultation with the Applicants and the secured creditors, reserves their rights to the extent consistent with the Stalking Horse Asset Purchase Agreement, to change the date of the hearing of the Sale Approval Motion in order to achieve the maximum value for the Assets.
24. At the hearing of the Sale Approval Motion, the Applicants shall seek approval from the Court to consummate the Successful Bid, and at the Trustee's election, to consummate the next best Qualified Bid (the "Back-Up Bid", and the party submitting the Back-Up Bid, the "Back-Up Bidder") should the Successful Bid not be closed in accordance with its terms for any reason.
25. If the Successful Bidder fails to consummate an approved Sale within five (5) business days after satisfaction of all conditions thereof ("the Closing Date"), the Applicants, in consultation with the Trustee, may, but shall not be required, to consummate the Back-Up Bid without the requirement of any further approval thereof by the Court. The Back-Up Bid shall remain open until the first business day following the consummation of the sale of the Purchased Assets to the Successful Bidder.

Modifications

26. The Trustee, after consultation with the Applicants and the secured creditors, may (a) determine which Qualified Bid, if any, is the best offer; and (b) reject at any time before the issuance and entry of an Approval and Vesting Order approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Trustee, the Applicants' estate or their creditors. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Trustee to - accept any Qualified Bid that (i) does not require a bid deposit of at least \$50,000 be placed in a protected, segregated account, which shall serve as protection and security for the Stalking Horse Bidder as outlined herein, (ii) does not equal or exceed the Overbid Amount, or (iii) imposes any terms and conditions upon the Stalking Horse Bidder that are contradictory to or in breach of the terms of the Stalking Horse Asset Purchase Agreement

other than any such terms and conditions set forth in these Bidding Procedures or the Bidding Procedures Order.

Miscellaneous

27. The Auction and these Bidding Procedures are for the benefit of the Applicants and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. The bid protections incorporated in these Bidding Procedures are for the benefit of the Stalking Horse Bidder.
28. The Trustee shall not have any liability whatsoever to any person or party, including without limitation the Applicants, the Stalking Horse Bidder, any other bidder or any creditor or other stakeholder, for any act or omission related to the process contemplated by these Bidding Procedures.
29. Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.