

COURT FILE NUMBER **QBG 1076 of 2021**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE **SASKATOON**

**BRIEF OF LAW ON BEHALF OF THE APPLICANTS,
FIRESONG GROUP**

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BRIEF OF LAW ON BEHALF OF THE APPLICANTS, FIRESONG GROUP

I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicants, Canadian Development Strategies Inc., Crossroads One Inc., Oak and Ash Farm Ltd., 1143402 Alberta Ltd., 1216699 Alberta Ltd., 2061778 Alberta Ltd., Dean Runzer, and Lori Runzer (collectively, “**FireSong Group**”), in support of its Application for an Order:

(a) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”), extending the period within which it is required to file proposals to its creditors under Division I of Part III of the BIA by 45 days from January 27, 2022 to March 13, 2022;

(b) directing the release of the funds from the Pioneer Financing held in trust by Trustee’s Counsel pursuant to the December 22 Order to pay the balance owing on the Hoeller Mortgage; and

(c) pursuant to section 65.13(1) of the BIA, approving of the sale of certain Alberta real property owned by FireSong Group (the “**Alberta Property**”).

2. The facts relied upon by FireSong Group in support of this Applications are those set out in the Affidavit of Lori Runzer sworn October 21, 2021 (the “**First Runzer Affidavit**”); the Affidavit of Lori Runzer sworn December 6, 2021 (the “**Second Runzer Affidavit**”); the Affidavit of Lori Runzer sworn December 17, 2021 (the “**Third Runzer Affidavit**”); the Affidavit of Lori Runzer sworn January 20, 2022 (the “**Fourth Runzer Affidavit**”), the First Report of the Proposal Trustee dated October 21, 2021; the Second Report of the Proposal Trustee dated December 6, 2021; the Third Report of the Proposal Trustee dated December 17, 2021 and the Fourth Report of the Proposal Trustee dated January 20, 2022. Words and phrases in this Brief of Law which begin with capital letters but which are not defined herein have the respective meanings ascribed to them in the Applicant’s Notice of Application filed with this Honourable Court on January 20, 2022.

II. ISSUES

3. FireSong Group respectfully submits that this Application raises the following issues for determination by this Honourable Court:

(a) To what extent is it appropriate for FireSong Group to be granted a 45-day extension to file proposals to its creditors?

¹ RSC 1985, c. B-3 [BIA].
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- (b) To what extent is it appropriate that the Court order that the trust funds held by Trustee's Counsel from the Pioneer Financing be released to pay the balance of the Hoeller Mortgage?
- (c) To what extent is it appropriate for this Honourable Court to grant an Order approving the proposed sale of the Alberta Property?
- (d) What are the sources of this Honourable Court's jurisdiction to make orders affecting property located in Alberta?

III. ARGUMENT

A. **An Order Granting a 45-Day Extension of the Time to File Proposals is Appropriate**

- 4. FireSong Group filed Notices of Intention to Make a Proposal to its creditors under section 50.4(1) of the BIA (the "**NOIs**") on September 29, 2021.² The deadline for FireSong Group to file proposals to its creditors has been extended by two Orders of this Court to January 27, 2022. FireSong now seeks a final 45-day extension to March 13, 2022. Pursuant to section 50.4(8) of the BIA, FireSong Group will be deemed to have made an assignment in bankruptcy on January 27, 2022 unless an Order is made on that day granting an extension of the time within which FireSong Group is required to file its proposals to creditors.
- 5. Section 50.4(9) of the BIA provides three requirements of which an insolvent person must satisfy the Court in order to obtain an extension of time to file a proposal to their creditors. That section reads as follows:³

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

² First Runzer Affidavit at para 3.

³ *Supra* note 1.

6. Pursuant to section 50.4(9) of the BIA, an insolvent person who has filed an NOI may be granted an extension of the time within which it is required to file a proposal to its creditors:
 - (a) in increments not exceeding 45 days; and
 - (b) for a period of time not exceeding (in the aggregate) six months from the filing of the NOI.
7. The granting of several consecutive 45-day extensions for insolvent persons to file proposals to their creditors in restructuring proceedings under Division I of Part III of the BIA is relatively common in Saskatchewan.
8. In *Re 10110090 Saskatchewan Ltd.*,⁴ Mr. Justice Elson granted an insolvent person a second 45-day extension of the time within which it was required to file a proposal to its creditors.
9. In *Re System Built Developments Inc.*,⁵ Mr. Justice Smith granted an insolvent person a third 45-day extension of the time within which it was required to file a proposal to its creditors.
10. In *Re Boyd Excavating Ltd.*,⁶ Madam Justice Rothery granted an insolvent person a fourth extension of the time within which it was required to file a proposal to its creditors. That fourth extension was of 18 days' duration (from October 1 to October 19, 2015). When added together with the initial 30-day period and three subsequent 45-day extensions, that fourth extension granted the maximum six-month period contemplated under section 50.4(9) of the BIA within which the insolvent person is required to file a proposal to its creditors.
11. As discussed in more detail below, FireSong Group meets all three requirements necessary to be granted an extension of time for filing proposals to creditors. Accordingly, FireSong Group respectfully submits that it is a worthy candidate to be granted an order for a final 45-day extension (from January 27, 2022 to March 13, 2022) of the time in which it is required to file proposals to its creditors.

a. FireSong Group is Acting in Good Faith and With Due Diligence

12. FireSong Group has acted and continues to act both in good faith and with due diligence.
13. FireSong Group has diligently pursued its restructuring. FireSong Group has retained the services of Mr. Jon Zwickel to assist with the restructuring,⁷ has engaged with hunting outfitters

⁴ (9 September 2020), QB No. 872 of 2020, Judicial Centre of Saskatoon (unreported) (Elson J).

⁵ (Estate No. 23-1927123, Judicial Centre of Saskatoon (unreported) (Smith J).

⁶ (24 September 2015), BKY 117 of 2015, Estate No. 22-1984833, Judicial Centre of Saskatoon (unreported) (Rothery J).

⁷ Fourth Runzer Affidavit at paras 11(a)-(c).

- to develop ongoing business relationships to rent the cabins in the spring and fall months,⁸ and has worked with kâniyâsihk Culture Camps to develop Culture Camps at FireSong Group.⁹ FireSong Group negotiated the wind up of the Trust regarding the Cranbrook Property and sale of the Alberta Property. These transactions, when implemented, will retire approximately \$2,163,000.00 of FireSong Group's indebtedness associated with those properties.¹⁰ Finally, as described in the Fourth Runzer Affidavit, FireSong Group has developed a preliminary framework for the proposals to its creditors.¹¹
14. The fact that FireSong Groups has not to this point finalized its proposal to its creditors has not arisen from a lack of diligence. Rather, the delay has been a result of the size (indebtedness totalling approximately \$15,000,000.00) and complexity of the debt structure (involving a limited partnership, multiple corporations and multiple individuals).
15. Section 50.4(9) of the BIA specifically contemplates that more than three 45-day extensions may be necessary for an insolvent person to file a proposal to its creditors, permitting the Court to extend the time for insolvent persons to file proposals for up to five months after the initial 30 day period (amounting to three 45-day extensions and a fourth extension of less than 45 days). This Honourable Court granted a third 45-day extension for the complex restructuring in *Re System Built Developments Inc.*¹² In *Boyd Excavating Ltd.*, this Honourable Court granted three 45-day extensions and a fourth extension of 18 days' duration.¹³
16. FireSong Group has communicated in a transparent fashion with its stakeholders and the Proposal Trustee regarding its restructuring and its affairs. FireSong Group sought Court approval of the winding up of the trust and vesting of the Cranbrook Property in Benjamin Runzer and Dallas Runzer (non-arms length parties) despite such approval not being strictly necessary to vest trust property under section 65.13(1) of the BIA.¹⁴ FireSong Group also openly negotiated with its stakeholders regarding their concerns as to the validity of the Trust and Hoeller Mortgage and implemented a process for the independent assessment of the validity of the Trust and Hoeller Mortgage (to be conducted at the cost of Benjamin Runzer and Dallas Runzer).

⁸ Fourth Runzer Affidavit at paras 11(n)-(q).

⁹ Fourth Runzer Affidavit at paras 11(e)-(m).

¹⁰ Fourth Runzer Affidavit at paras 20-23; Third Runzer Affidavit at para 20.

¹¹ Fourth Runzer Affidavit at paras 13-19.

¹² *Supra* note 5.

¹³ *Supra* note 6.

¹⁴ Section 66(1) of the BIA provides that all provision of the BIA except those in Division II of Part II apply to proposals. Section 67(1)(a) of the BIA provides that the property of a bankrupt divisible amongst its creditors does not include property held in trust by bankrupts for other persons. Accordingly, claims to trust property by beneficiaries and the distribution of trust property is not stayed under section 69.1 of the BIA. See generally *Bedard v Schell*, 1987 CanLII 4817 at paras 5-6, 59 Sask R 71 (QB).

17. There is nothing to suggest that FireSong Group is pursuing an extension of time to file proposals to its creditors in order to achieve an ulterior motive or to delay or frustrate creditor recovery. Rather, FireSong Group has taken tangible steps towards restructuring with a view to recovery and maximizing stakeholder interests and has made significant progress toward that end. FireSong Group has therefore met the requirements of good faith and due diligence for an extension of the time within which it is required to file proposals to its creditors under section 50.4(9)(a) of the BIA.

b. FireSong Group is Likely to Make Viable Proposals to Its Creditors if the 45-Day Extension is Granted

18. FireSong Group's progress in developing a plan for restructuring and in developing proposals to its creditors indicates that it is likely that FireSong Group will be able to make viable proposals to its creditors if the 45-day extension is granted.

19. The requirement that an insolvent person prove that it is *likely* that they will be able to make a viable proposal to their creditors if the extension sought is granted must be interpreted in light of the ability of the Court to grant an insolvent person up to an aggregate of six months to file a proposal under section 50.4(9) of the BIA. In other words, an insolvent person is not required to strictly prove that they will be able to make a viable proposal within the period of the extension, but that there is *some likelihood* that a viable proposal will be advanced within the time frame of the extension applied for. Nor is an insolvent person required to prove that their major creditors support the extension being granted. Justice Moir of the Nova Scotia Supreme Court so held in *Re Kocken Technologies Systems Inc.*:¹⁵

[19] Next is the requirement that a viable proposal is likely to be made.

[20] Ms. Graham swears that the Bank of Montreal "has lost all confidence and trust in current management and ownership". "BMO will not engage in negotiations." She is of the view "that any proposal is doomed to fail". The Bank of Montreal is the primary secured creditor and its support will be necessary when the time comes for a vote.

[21] Such statements by a secured creditor with a veto are not determinative. They are forecasts rather than evidence of present fact. We must not assume intransigence in a world in which misunderstandings occur, they are sometimes corrected, and trust is sometimes restored in whole or in part. Nor may we, in this case, assume that the proposed terms will require a restoration of confidence or trust or a continuing relationship with the Bank of Montreal.

[22] I have some difficulty with the decision of Justice Penny in *NS United Kaiun Kaisha, Ltd. v. Cogent Fibre Inc.*, 2015 ONSC 5139 (Ont. S.C.J.), which suggests that s. 50.4(9)(b) requires at least a hint of what the insolvent will offer to the secured creditor and what the proposal will contain. It is in the

¹⁵ 2017 NSSC 80, 50 CBR (6th) 168.

nature of proposals that they are developed and, if an extension is needed, the proposal is developing.

[23] The requirement is "would likely be able to make a viable proposal", not "has settled on terms likely to be accepted". I think that is the point made by Justice *Goodfellow in H & H Fisheries Ltd., Re*, 2005 NSSC 346 (N.S. S.C.), when he says that s. 50.4(9)(b) means "that a reasonable level of effort dictated by the circumstances must have been made that gives some indication of the likelihood a viable proposal will be advanced within the time frame of the extension applied for." [Emphasis added]

20. FireSong Group has exerted a level of effort in developing a proposal thus far that indicates a likelihood that a viable proposal will be advanced within the time frame of the 45-day extension sought. FireSong Group has engaged the assistance of restructuring advisors such as Jon Zwickel of InnVentures and West Grove Capital.¹⁶ It has developed relationships with kâniyâsihk Culture Camps¹⁷ and prominent hunting outfitters¹⁸ which it seeks to leverage in order to stabilize its cash flow in the seasons in which where FireSong Resort has traditionally been less busy. FireSong Group negotiated the wind up of the Trust pertaining to the Cranbrook Property and the sale of the Alberta Property which (when implemented) will remove from its balance sheet secured debt totalling approximately \$2,163,000.00.¹⁹ FireSong Group has initiated discussions with potential lenders regarding refinancing its obligations and expects such discussions to be successful given the improvements to its balance sheet.²⁰
21. While FireSong Group has been delayed in finalizing its proposal to its creditors, that delay has occurred primarily as a result of the complexity of its debt structure. FireSong Group's efforts thus far have laid the foundation for a viable proposal to its creditors. Its restructuring is approaching maturity, with FireSong Group having developed a preliminary plan for the proposals to its creditors. FireSong Group respectfully seeks a final 45-day extension to allow it to complete its Liquidation Analysis by March 1, 2022 and to file its Proposal to creditors on or before March 13, 2022.
22. The only alternative outcome to granting a further extension is the automatic deemed assignment in bankruptcy of FireSong pursuant to section 50.4(8) of the BIA. That outcome would undermine the benefits of its restructuring efforts to date and would very clearly have a highly negative impact on its stakeholders.
23. FireSong Group has made meaningful progress in developing its restructuring plan and its proposals to its creditors since filing the NOI's on September 29, 2021 and since being granted

¹⁶ Fourth Runzer Affidavit at paras 11(a)-(c) and 15-18.

¹⁷ Fourth Runzer Affidavit at paras 11(e)-(m).

¹⁸ Fourth Runzer Affidavit at paras 11(n)-(q).

¹⁹ Fourth Runzer Affidavit at paras 20-23; Third Affidavit of Lori Runzer at para 20.

²⁰ Fourth Runzer Affidavit at para 16.

the Second Stay Extension Order on December 13, 2021. If FireSong Group's progress continues at a similar pace, there is a likelihood that it will advance viable proposals to its creditors before the 45-day extension elapses on March 13, 2022.

24. For all of these reasons, FireSong Group respectfully submits that it meets the requirement of likely being able to make viable proposals to its creditors under section 50.4(9)(b) of the BIA.

c. No Creditor of FireSong Group Will Be Materially Prejudiced if the 45-Day Extension is Granted

25. The proposed 45-day extension of time for FireSong Group to file proposals to its creditors will not materially prejudice any of FireSong Group's creditors.

26. The focus of the requirement that an insolvent person show that none of its creditors will be materially prejudiced under section 50.4(9)(c) is on whether the extension will cause prejudice to the insolvent person's creditors, and not whether the eventual proposal might cause prejudice to the insolvent person's creditors.²¹ Second, the test is one of objective *material* prejudice. As discussed by Justice Steeves of the British Columbia Supreme Court in *Enirgi Group Corp. v Andover Mining Corp.*:²²

[76] The third requirement under s. 50.4(9) is that no creditor should be materially prejudiced if an extension is granted. As emphasized in *Cantrail* at para. 21 the test is not prejudice but material prejudice. It is also an objective test: *Cumberland* at para. 11. In the subject case there is no evidence that the security in the first promissory note would be less if an extension was granted. Enirgi asserts that Andover is restructuring its assets but there is no evidence of that and, in the event it occurs, remedies are available on short notice. Unlike in *Cumberland*, the debtor here is not converting inventory into cash. It is true that the note (or notes) is non-interest bearing but Enirgi knew that when it became an assignee in March 2013 and the note had not been unpaid since October 2012. I conclude that there is some prejudice to Enirgi but not material prejudice. [Emphasis added]

27. No evidence has been filed which indicates that a creditor of FireSong Group will be materially prejudiced by a 45-day extension of the time for FireSong Group to file proposals to its creditors.²³ Allowing FireSong Group to develop and implement a restructuring plan to continue to operate as a going concern will result in a better financial outcome for the stakeholders than the alternative.²⁴ Further, as indicated in the Fourth Report of the Proposal Trustee, there is no immediate threat of depreciation or devaluation of FireSong Group's assets or erosion of

²¹ *Re Scotian Distribution Services Ltd*, 2020 NSSC 131 at para 22, 78 CBR (6th) 258.

²² 2013 BCSC 1833, 6 CBR (6th) 32.

²³ Fourth Runzer Affidavit at para 27.

²⁴ Fourth Runzer Affidavit at para 27.

FireSong Group's cash flows that would cause FireSong Group's creditors to be prejudiced if viable proposals are not developed.²⁵

28. FireSong Group's creditors stand to gain in the form of enhanced recovery from FireSong Group being provided with additional time to develop a restructuring plan and proposals to its creditors. There is no evidence that FireSong Group's creditors will be materially prejudiced by FireSong Group being provided with a 45-day extension to file proposals to its creditors. FireSong Group therefore respectfully submits that it meets the requirement for an extension of time to file proposals under section 50.4(9)(c) of the BIA.

B. The Funds Held in Trust by Trustee's Counsel from the Pioneer Financing Should be Released for Payment of the Balance of the Hoeller Mortgage

29. Pursuant to the December 22 Order, Trustee's Counsel holds the funds from the Pioneer Financing in trust pending the Proposal Trustee's determination of the validity of the Hoeller Mortgage.

30. As detailed in the Fourth Report of the Proposal Trustee, the Proposal Trustee has conducted an assessment of the Hoeller Mortgage.²⁶ Accordingly, and as will be addressed in more detail in oral submissions at the January 27 hearing, the trust funds held by the Proposal Trustee from the Pioneer Financing ought to be released to pay out the Hoeller Mortgage.

C. An Order Approving the Sale of the Alberta Property is Appropriate

31. FireSong Group has negotiated a sale of a portion its Alberta real estate to Dallas Nutt and Renee Nutt (the "**Proposed Purchaser**") for \$1,500,000.00 (the "**Proposed Sale**").²⁷ FireSong Group seeks approval of the Proposed Sale from this Honourable Court pursuant to section 65.13 of the BIA.

32. Insolvent persons that have filed NOIs are prohibited from selling assets outside of the ordinary course of business unless authorized to do so by the Court. Section 65.13(4) of the BIA identifies factors for the Court to consider in determining whether a sale of assets outside of the ordinary course of business should be approved:²⁸

Restriction on disposition of assets

65.13(1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder

²⁵ Fourth Report of the Proposal Trustee at para 45.

²⁶ Fourth Report of the Proposal Trustee at paras 30-34.

²⁷ Fourth Runzer Affidavit at paras 20-23 and Exhibit B.

²⁸ *Supra* note 1.

approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

...

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditor who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. whether the trustee approved the process leading to the proposed sale or disposition;
- c. whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. the extent to which the creditors were consulted;
- e. the effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

33. The factors for consideration for the Court in approving a proposed sale outlined in section 65.13(4) are both non-exhaustive and non-determinative. The approval of a sale is ultimately a matter of judicial discretion to be exercised with a view to whether the proposed sale is appropriate, fair, and reasonable in the circumstances.²⁹

34. The process leading to FireSong Group's Proposed Sale was fair and reasonable. The Farmland was exposed to the market and the Proposed Purchaser's offer was the best offer received by FireSong Group. FireSong Group retained the services of third parties to assist with the Proposed Sale, including West Grove Capital Advisors to assist with the financing of the transaction.³⁰ There is nothing to suggest that a different process or additional exposure to

²⁹ See *Re White Birch Paper Holding Co.*, 2010 QCCS 4915 at paras 48-49, 72 CBR (5th) 49 [**White Birch**] where Chief Justice Mongeon found that the ultimate test under the parallel provisions in section 36 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 is whether the proposed sale is appropriate, fair and reasonable. For a discussion of the application of *White Birch* of the BIA see *Re Feronia Inc.*, 2020 BCSC 1372, 82 CBR (6th) 222 at paras 38-39 [**Feronia**].

³⁰ Second Runzer Affidavit at para 11.

the market would result in a better offer to purchase the Farmland (nor does FireSong Group have the benefit of additional time given ATB's Redemption Order and its impending forced sale of the Farmland).³¹

35. The Proposal Trustee was consulted and approved of the process leading to the Proposed Sale and approves of the terms of the Proposed Sale.³² The Proposal Trustee has indicated that it supports the Proposed Sale, as the alternative outcome of a forced sale through the ATB foreclosure proceedings is likely to deliver a comparatively negative outcome for the stakeholders.³³
36. The Alberta Property is encumbered by ATB's mortgage. As a result, FireSong Group's creditors could expect to recover little if anything from the sale of the Alberta Property on FireSong Group's bankruptcy. Further, it is unlikely that the Alberta Property would still be available for sale during FireSong Group's bankruptcy given ATB's impending enforcement of its Redemption Order.
37. FireSong Group has informed and consulted with ATB concerning the sale process for the Alberta Property. ATB does not object to the sale and its counsel has indicated that ATB is awaiting the outcome of the January 27 hearing before this Honourable Court. FireSong Group's unsecured creditors were informed of the proposed sale of the Farmland by the First Runzer Affidavit filed in the within proceedings.³⁴ FireSong Group has not consulted with its unsecured creditors concerning the Proposed Sale given the large number of unsecured creditors and the remote prospect of the unsecured creditors recovering from the sale of the Alberta Property, which is encumbered by ATB's mortgage. In *Re Feronia Inc.*,³⁵ Justice Millman of the British Columbia Supreme Court concluded that a lack of consultation with unsecured creditors is not a meaningful consideration where creditors do not have a realistic prospect of recovery from the asset which is the subject of the proposed sale:³⁶

D. To what extent were the creditors consulted?

[61] The sales process was conducted in consultation with the creditors holding the vast majority of Feronia's debt. It is not disputed, however, that the debenture holders were not formally consulted through the indenture trustee before Feronia entered into the Sponsor Support Agreement and then carried out and essentially completed the sales process. They would not even have become aware of those developments unless they happened to review Feronia's relevant press releases at the time. By the time the indenture trustee

³¹ Fourth Runzer Affidavit at para 23.

³² Fourth Report of the Proposal Trustee at paras 21-28.

³³ Fourth Report of the Proposal Trustee at paras 21-28.

³⁴ First Runzer Affidavit at paras 15-19; Second Runzer Affidavit at paras 10-12.

³⁵ *Supra* note 28.

³⁶ *Ibid.*

was given formal notice of the filing of Feronia's intention to make a proposal, the sales process had essentially run its course.

[62] The lack of consultation with the debenture holders is a factor that, I accept, must be weighed in the analysis. But the importance of that factor depends on the degree to which there was ever a realistic prospect of any recovery for them. The evidence suggests that there was not.

38. Finally, the consideration to be received for the Alberta Property is reasonable and fair, taking into account its fair market value. The purchase price for the Proposed Sale is \$1,500,000.00.³⁷ FireSong Group obtained an appraisal of the Alberta Property from Bourgeois Brook Chin Associates in August 2019 valuing the Alberta Property at \$1,450,000.00 (the “**Bourgeois Appraisal**”).³⁸ The purchase price for the Proposed Sale exceeds the estimated market value of the Alberta Property in the Bourgeois Appraisal by \$50,000.00. The Bourgeois Appraisal provides compelling evidence that the consideration to be received for the Alberta Property is reasonable and fair.

39. The Proposed Sale is appropriate, fair, and reasonable in the circumstances. The purchase price for the Proposed Sale exceeds the fair market value of the Alberta Property. The Alberta Property is subject to ATB’s Redemption Order and will be sold through a forced sales process if the order requested by FireSong Group to approve the Proposed Sale is not granted. FireSong Group’s unsecured creditors do not have a realistic prospect of recovery from the sale of the Alberta Property. Those prospects are further decreased if the Alberta Property is sold through a forced sale within the ATB foreclosure proceeding. The Proposal Trustee and ATB were consulted regarding the sales process and approve of the Proposed Sale. FireSong Group therefore respectfully submits that an Order approving the Proposed Sale is necessary, appropriate and in the best interest of all stakeholders.

D. The Court has Jurisdiction to Make Orders Respecting Property Located in the Province of Alberta

40. As a result of the filing of the NOIs with the Office of the Superintendent of Bankruptcy in the Province of Saskatchewan, this Honourable Court has jurisdiction over property to which FireSong Group has legal or beneficial title, regardless of the particular Canadian province in which such property is located.

41. The definition of “property” in section 2 of the BIA reads as follows:³⁹

2. In this Act:

...

³⁷ Fourth Runzer Affidavit at para 22.

³⁸ Fourth Runzer Affidavit at Exhibit D.

³⁹ *Supra* note 1.

“property” means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property

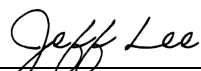
42. It is relatively common for the Court of Queen’s Bench for Saskatchewan in Bankruptcy and Insolvency to make orders regarding property owned by insolvent persons which is located in other provinces within the course of insolvency proceedings before this Court.
43. In *Re Kolsy Homes Ltd. and Rivaro Capital Corporation*,⁴⁰ Madam Justice Rothery made a number of orders approving the sale of property, and vesting title to property, located in the City of Airdrie, Alberta. In *Re Contour Realty Inc.*,⁴¹ Mr. Justice Elson granted a Sale Approval and Vesting Order in regard to lands owned by Contour Realty Inc. located in the vicinity of Virden, Manitoba. Most recently, Mr. Justice Gabrielson granted the December 22 Order within these within proceedings concerning land located in the vicinity of Cranbrook, British Columbia.
44. For all of these reasons, it is respectfully submitted that this Honourable Court has jurisdiction to make an Order in regard to the property of FireSong Group located in the Province of Alberta.

IV. RELIEF REQUESTED

45. For all of the foregoing reasons, FireSong Group respectfully requests that this Honourable Court grant an Order to extend the period in which it is required to file proposals to FireSong Group’s creditors under Division I of Part III of the BIA by 45 days (from January 27 to March 13, 2022), an Order directing the release of trust funds held by Trustee’s Counsel for payment of the Hoeller Mortgage, and an Order approving of the Proposed Sale of the Alberta Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Saskatoon, Saskatchewan, this 20th day of January, 2022.

MLT AIKINS LLP

Per: 
Jeffrey M. Lee, Q.C., Dana Nowak and Shay Brehm, Solicitors for FireSong Group

⁴⁰ (24 April 2019), QB No. 885 of 2018, Judicial Centre of Saskatoon (unreported) (Rothery J).

⁴¹ (18 July 2021), QB No. 1844 of 2021, Judicial Centre of Saskatoon (unreported) (Elson J).

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File No:	153171.1

TABLE OF AUTHORITIES

COURT ORDERS

TAB

10110090 Saskatchewan Ltd., Re, (9 September 2020), QB No. 872 of 2020, Judicial Centre of Saskatoon (unreported) (Eelson J).

A

System Built Developments Inc., Re, (24 February 2015) Estate No. 23-1927123, Judicial Centre of Saskatoon (unreported) (Smith J).

B

Boyd Excavating Ltd., Re, (24 September 2015), BKY 117 of 2015, Estate No. 22-1984833, Judicial Centre of Saskatoon (unreported) (Rothery J).

C

Kolsy Homes and Rivaro Capital Corporation, Re, (24 April 2019), QB No. 885 of 2018, Judicial Centre of Saskatoon (unreported) (Rothery J).

D

Contour Realty Inc., Re, (18 July 2021), QB No. 1844 of 2021, Judicial Centre of Saskatoon (unreported) (Eelson J).

E

JURISPRUDENCE

Bedard v Schell, 1987 CanLII 4817, 59 Sask R 71 (QB).

CanLII

Kocken Technologies Systems Inc., Re, 2017 NSSC 80, 50 CBR (6th) 168.

CanLII

Scotian Distribution Services Ltd, Re, 2020 NSSC 131, 78 CBR (6th) 258.

CanLII

Enirgi Group Corp. v Andover Mining Corp., Re, 2013 BCSC 1833, 6 CBR (6th) 32.

CanLII

White Birch Paper Holding Co., Re, 2010 QCCS 4915, 72 CBR (5th) 49.

CanLII

Feronia Inc., Re, 2020 BCSC 1372, 82 CBR (6th) 222.

CanLII

**Form 10-3
(Rule 10-3)**

**CANADA)
PROVINCE OF SASKATCHEWAN)**

**Court No.: Q.B. No. 872 of 2020
Estate No.: 23-2654754**

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE SASKATOON

APPLICANT 101100090 SASKATCHEWAN LTD.

**IN THE MATTER OF SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C.
B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 101100090
SASKATCHEWAN LTD.**

ORDER

(Second Extension)

Order made this 9th day of September, 2020.

Before the Honourable Mr. Justice R.W. Elson on the 8th day of September, 2020.

On the Application of Mike Russell and Kevin Hoy of the W Law Group LLP, lawyers for the Applicant, 101100090 SASKATCHEWAN LTD., and upon reading the Notice of Application dated September 4, 2020 (the "**Application**"), the Service List, the Second Report of the Proposal Trustee, THE BOWRA GROUP INC. (the "**Proposal Trustee**") dated September 4, 2020, the affidavit of Ryan Kolibab sworn September 4, 2020, and this Order, all filed; and upon hearing from Mike Russell on behalf of the Applicant; and upon hearing representations from any other interested party represented by counsel at the application;

The Court hereby orders that:

SERVICE

1. Service of the Applicant's Notice of Application and supporting materials by electronic transmission upon those parties listed in the Service List established in these proceedings is hereby validated and declared to be timely and sufficient.
2. Queen's Bench Rule 10-4(2) is hereby waived.

3. This Order shall be served on the Service List established in these proceedings.

EXTENSION OF TIME TO FILE PROPOSAL

4. Pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* ("BIA"), the period within which the Applicant may file a proposal shall be and is hereby extended to 11:59 p.m. on October 24, 2020.
5. The stay of proceedings in the within matter is extended by 45 days to and including October 24, 2020.

ISSUED at Saskatoon, Saskatchewan, this 9th day of September, 2020.


Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of Firm:	The W Law Group LLP
Name of lawyer in charge of file:	Michael Russell and Kevin N. Hoy
Address of legal firm:	110-21 st Street East Saskatoon, SK S7K 0B6
Telephone number:	(306) 244-2242
Facsimile:	(306) 652-0332
Email:	mrussell@wlawgroup.com / khoy@wlawgroup.com

COURT NUMBER 23-1927123

ESTATE NUMBER 23-1927123

COURT FILE NUMBER 1590 of 2014

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE PROPOSAL OF SYSTEM BUILT DEVELOPMENTS INC.
pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

ORDER

(Third Filing Extension, Increase of Administrative Charge, Varying and Ratification of Disbursement Order, Varying of Priority of Unpaid GST Claim)

Before the Honourable Mr. Justice R.S. Smith in Chambers the 24th day of February, 2015.

On the Application of Jeffrey M. Lee, Q.C., and Mike Russell, counsel on behalf of System Built Developments Inc. ("**SBDI**"); and upon hearing from Mike Russell on behalf of SBDI and counsel present on behalf of any other interested parties; and on reading the Notice of Application on behalf of SBDI dated February 20, 2015, the Fourth Report of the Proposal Trustee and a proposed draft of this Order, all filed;

The Court orders:

Validation and Abridgment of Service

1. Service of the Notice of Application on behalf of System Built Developments Inc. and the materials filed in support thereof (collectively, the "**Application Materials**") by electronic mail or facsimile upon those parties listed on the Service List established in these proceedings shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials shall be and is hereby deemed to be timely and sufficient.

Extension of Stay of Proceedings

2. Pursuant to subsection 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), the period within which SBDI is required to file a proposal to its creditors with the Official Receiver under subsection 62(1) of the BIA shall be and is hereby extended by a further 45 days, from February 28, 2015, to and including April 14, 2015.

Varying, Ratification and Confirmation of the Disbursement of Asset Sale Proceeds Order

3. An Order pursuant to subsection 187(5) of the BIA in regard to the Disbursement of Asset Sale Proceeds Order dated February 4, 2015:
 - (a) varying paragraph 2 by deleting the words "and presently held in trust by the NOI Trustee in the amount of \$50,841.25"; and
 - (b) ratifying and confirming subparagraph 2(b).

Increase of Administrative Charge

4. Pursuant to subsections 64.2(1) and 187(5) of the BIA, the administrative charge on the assets of SBDI (the "**Administrative Charge**") granted and created pursuant to paragraph 2 of the Interim Financing and Administrative Charge Approval Order dated November 28, 2014 (the "**November 28 Order**"), to secure payment of the reasonable professional fees and disbursements of Deloitte Restructuring Inc., the Trustee appointed pursuant to the notice of intention to make a proposal to creditors (the "**NOI**") pursuant to section 50.4 of the BIA filed by SBDI in these proceedings, (the "**NOI Trustee**") and the reasonable professional fees and disbursements of legal counsel to SBDI, the law firm of MacPherson Leslie & Tyerman LLP, shall be and is hereby increased from the amount of \$65,000.00 to the amount of \$100,000.00.

Varying of November 28 Order in Regard to Priority of Claim for Unpaid GST

5. Pursuant to subsection 187(5) of the BIA, paragraphs 1 and 2 of the November 28 Order shall be and are hereby varied by deleting the words "and unpaid GST", such that the Interim Financing Charge and the Administrative Charge defined, granted and created pursuant to such paragraphs 1 and 2, respectively, shall rank in priority to the claim of Canada Revenue Agency against SBDI for unpaid GST.

Restating and Amending Orders

6. The following Orders, namely:
- (a) the Sale Approval Order dated November 21, 2014, paragraph 5 of which was varied by paragraph 3 of the Disbursement of Asset Sale Proceeds Order dated February 4, 2015;
 - (b) the November 28 Order, paragraphs 1 and 2 of which are varied by paragraphs 4 and 5 of this Order; and
 - (c) the Disbursement of Asset Sale Proceeds Order dated February 4, 2015, paragraph 2 of which is varied, ratified and confirmed by paragraph 3 of this Order,

shall be and are hereby amended and restated in the forms attached hereto as Schedules "A", "B" and "C", respectively.

ISSUED at Saskatoon, in the Province of Saskatchewan, this 25th day of February, 2015.



(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	MacPherson Leslie & Tyerman LLP
Name of lawyer in charge of file:	Jeffrey M. Lee, Q.C. and Mike Russell
Address of legal firms:	1500 - 410 22nd Street, Saskatoon SK S7K 5T6
Telephone number:	(306) 975-7100
Fax number:	(306) 975-7145
E-mail address:	JMLee@mlt.com / MRussell@mlt.com
File No:	58502.1

Schedule "A"

COURT NUMBER 23-1927123

ESTATE NUMBER 23-1927123

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE PROPOSAL OF SYSTEM BUILT DEVELOPMENTS INC.
pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

CONSENT ORDER

Before the Honourable Mr. Justice R.S. Smith in Chambers the 21st day of November, 2014.

On the Application of Jeffrey M. Lee, Q.C., and Mike Russell, lawyers on behalf of System Built Developments Inc. ("**SBDI**"); and upon hearing from Jeffrey M. Lee, Q.C., on behalf of SBDI, and Nolan Dooley, on behalf of 60 Street Saskatoon Holdings Ltd. (the "**Landlord**") and counsel present on behalf of other interested parties; and on reading the Notice of Application on behalf of SBDI dated November 17, 2014, the Affidavit of Gaetan Blouin sworn November 17, 2014, the Confidential Supplementary Affidavit of Gaetan Blouin; the First Report of the Proposal Trustee dated November 17, 2014, and a proposed draft of this Order; and upon reading the consent of each of Mike Russell on behalf of SBDI, and Nolan Dooley, on behalf of the Landlord; all filed:

The Court orders:

Abridgment of Service

1. The time for service of the Notice of Application on behalf of SBDI dated November 17, 2014 and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby abridged, such that service of the Application Materials shall be deemed to be good, valid, timely and sufficient.

Extension of Stay of Proceedings

2. Pursuant to subsection 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), the period within which SBDI is required to file a proposal to its creditors with the Office of the Superintendent in Bankruptcy/Official Receiver shall be and is hereby extended by a further 45 days, from November 29, 2014, to and including January 13, 2015.

Approval to Remove and Sell Assets

3. Subject to paragraphs 4, 5, 6 and 7 hereof, pursuant to subsection 65.13(1) of the BIA, SBDI shall be and is hereby authorized and directed:
 - a) to remove those of its assets (the "**SBDI Assets**") more particularly described in the Affidavit of Gaetan Blouin sworn November 18, 2014, and filed in these proceedings (the "**Blouin Affidavit**") from its existing business premises bearing the civic address of 820 – 60th Street East, Saskatoon, Saskatchewan (the "**Premises**") to an alternative secure location of its choice; and

- b) to conduct one or more sales of such SBDI Assets (the "**SBDI Asset Sales**") outside of the ordinary course of its business, upon substantially the same terms and conditions as those contained in the form of sample Asset Purchase Agreement (the "**APA**") attached to the Blouin Affidavit, and to execute such documents and to perform such acts as may reasonably be required in order to complete such SBDI Asset Sales in accordance with this Order (the "**SBDI Asset Sale Process**").
4. The removal from the Premises of the SBDI Assets by SBDI to an alternative secure location chosen by SBDI and the conduct of the SBDI Asset Sales shall be carried out by SBDI in consultation with and under the supervision of Deloitte Restructuring Inc., the licensed trustee which has consented to act as Trustee under the Proposal of SBDI (the "**Proposal Trustee**").
5. All net sale proceeds of the SBDI Asset Sales, after payment by SBDI to any sales consultant(s) engaged by SBDI to conduct the SBDI Asset Sales of the amount of any and all sales commissions earned by such sales consultant(s) in regard to such SBDI Asset Sales, together with any other reasonable costs of such SBDI Asset Sales, shall be deposited by or on behalf of SBDI into a dedicated, interest-bearing trust account maintained by the Proposal Trustee (the "**SBDI Trust Account**"), shall be held by the Proposal Trustee in trust for SBDI (subject to the terms of this Order) and shall not be disbursed by the Proposal Trustee until: (a) written agreement between SBDI, the Landlord and the Proposal Trustee; or (b) further Order of this Court.
6. The Proposal Trustee shall from time to time provide reports and updates to 60 Street Saskatoon Holdings Ltd. (the "**Landlord**") (with copies to SBDI) regarding the location and condition of the SBDI Assets, the status of the SBDI Asset Sale Process, the conduct of the SBDI Asset Sales and the balance on deposit in the SBDI Trust Account. To the full extent possible, such reports and updates shall be provided by the Proposal Trustee to the Landlord in an informal and cost-effective manner (including by means of e-mail correspondence, as deemed necessary and appropriate by the Proposal Trustee, in its sole discretion).
7. Upon the Proposal Trustee determining that one or more sales of the SBDI Assets to purchasers (the "**Subject Purchasers**") pursuant to the SBDI Asset Sale Process have closed to the satisfaction of SBDI and pursuant to the terms of this Order, the Proposal Trustee shall file with this Honourable Court and shall serve upon the Landlord, SBDI and the Subject Purchasers one or more certificates to that effect (the "**Proposal Trustee's Closing Certificate(s)**"), whereupon the SBDI Assets identified in such Proposal Trustee's Closing Certificate(s) shall vest in each of the Subject Purchasers identified in such Proposal Trustee's Closing Certificate(s), effective as of the date of closing identified in such Proposal Trustee's Closing Certificate(s), free and clear of any and all encumbrances, taxes and arrears of taxes, claims, interests, security interests, liens, charges, licenses, trusts, deemed trusts (whether contractual, statutory or otherwise), mortgages, instruments, leases, assignments, judgments, executions, options, claims, levies or any other rights (whether contractual, statutory, arising by operation of law or created by or pursuant to Orders made in these proceedings) of any persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, municipalities, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives and Her Majesty in Right of Canada and Her Majesty in Right of the Province of Saskatchewan (as the case may be).

Sealing of the Confidential Supplementary Affidavit of Gaetan Blouin

8. Counsel for SBDI having complied with Practice Directive #3, the Confidential Supplementary Affidavit of Gaetan Blouin shall be and is hereby sealed (*nunc pro tunc* as of the date of filing of the Application Materials) until the earlier of: (a) April 30, 2015; or (b) the date of any

further Order of this Court addressing the sealing of the Confidential Supplementary Affidavit of Gaetan Blouin.

Approval of Motions Regarding Interim Financing, Interim Financing Charge and Administrative Charge

9. The motions pursuant to subsections 50.5(1) and 64.2(1) of the BIA for an Order approving interim financing secured by an interim financing charge and an administrative charge, respectively, on the assets of SBDI (as more particularly described in the Application Materials) shall be and are hereby adjourned to a date to November 28, 2014, at 9:00 a.m.

Issue as to Whether and to What Extent Occupation Rent is Payable by SBDI to the Landlord

10. The issue of whether and to what extent SBDI is required to pay occupation rent to the Landlord in regard to the occupation by SBDI of the Premises from and after November 1, 2014, shall be determined by agreement between SBDI and the Landlord or by further Order of the Court.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this "21st" day of November, 2014.

"Bev Stang"
(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: MacPherson Leslie & Tyerman LLP
Name of lawyer in charge of file: Jeffrey M. Lee, Q.C. and Mike Russell
Address of legal firms: 1500 - 410 22nd Street, Saskatoon SK S7K 5T6
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E-mail address: JMLee@mlt.com / MRussell@mlt.com
File No: 58502.1

Schedule "B"

COURT NUMBER 23-1927123
ESTATE NUMBER 23-1927123
COURT FILE NUMBER 1590 of 2014
**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**
JUDICIAL CENTRE SASKATOON

**IN THE MATTER OF THE PROPOSAL OF SYSTEM BUILT DEVELOPMENTS INC.
pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

CONSENT ORDER

Before the Honourable Mr. Justice R.S. Smith in Chambers the 28th day of November, 2014.

On the Application of Jeffrey M. Lee, Q.C., and Mike Russell, lawyers on behalf of System Built Developments Inc. ("**SBDI**"); and upon hearing from Jeffrey M. Lee, Q.C., on behalf of SBDI, Nolan Dooley, on behalf of 60 Street Saskatoon Holdings Ltd., and counsel present on behalf of other interested parties; and on reading the Notice of Application on behalf of SBDI dated November 17, 2014, the Affidavit of Gaetan Blouin sworn November 17, 2014, the Confidential Supplementary Affidavit of Gaetan Blouin, the First Report of the Proposal Trustee dated November 17, 2014, the Affidavit of Janine Stener sworn November 24, 2014, and a proposed draft of this Order, all filed:

The Court orders:

Approval of Interim Financing and Interim Financing Charge

1. Pursuant to subsection 50.6(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), SBDI shall be and is hereby authorized to borrow the amount of Twenty-Seven Thousand, Five Hundred (\$27,500.00) Dollars (the "**Interim Financing**") from 101217277 Saskatchewan Ltd. upon substantially the same terms and conditions as those contained in the Commitment Letter filed with the Court, which Interim Financing shall be and is hereby ordered to be secured by a first priority charge on the assets of SBDI (the "**Interim Financing Charge**"), which Interim Financing Charge shall rank in priority to all other interests in or claims to the SBDI Assets (and the proceeds of the SBDI Assets), save and except for claims of Canada Revenue Agency against SBDI for unpaid employee source deductions and unpaid GST and claims of employees of SBDI and former employees of SBDI for unpaid wages and salary owed to them by SBDI.

Approval of Administrative Charge

2. Pursuant to subsection 64.2(1) of the BIA, an administrative charge on the assets of SBDI in the amount of ~~Sixty-Five~~ One Hundred Thousand (~~\$65,000.00~~ 100,000.00) Dollars (the "**Administrative Charge**") shall be and is hereby granted and created in order to secure payment of the reasonable professional fees and disbursements of the Proposal Trustee and the reasonable professional fees and disbursements of legal counsel to SBDI (the law firm of MacPherson Leslie & Tyerman LLP), which Administrative Charge shall rank in priority to all other interests in or claims to the SBDI Assets (and the proceeds of the SBDI Assets), save

and except for claims of Canada Revenue Agency against SBDI for unpaid employee source deductions and unpaid GST, claims of employees of SBDI and former employees of SBDI for unpaid wages and salary owed to them by SBDI and the Interim Financing Charge.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this "28th" day of November, 2014.

"Bev Stang"
(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	MacPherson Leslie & Tyerman LLP
Name of lawyer in charge of file:	Jeffrey M. Lee, Q.C. and Mike Russell
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E-mail address:	JMLee@mlt.com / MRussell@mlt.com
File No:	58502.1

Schedule "C"

COURT NUMBER 23-1927123

ESTATE NUMBER 23-1927123

COURT FILE NUMBER 1590 of 2014

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE PROPOSAL OF SYSTEM BUILT DEVELOPMENTS INC.
pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

ORDER (Disbursement of Asset Sale Proceeds)

Before the Honourable Mr. Justice R.S. Smith in Chambers the 4th day of February, 2015.

On the Application of Jeffrey M. Lee, Q.C., and Mike Russell, counsel on behalf of System Built Developments Inc. ("**SBDI**"); and upon hearing from Jeffrey M. Lee, Q.C. and Mike Russell, on behalf of SBDI, and counsel present on behalf of any other interested parties; and on reading the Notice of Application on behalf of SBDI dated January 29, 2015, the Affidavit of Gaetan Blouin sworn January 29, 2015, and a proposed draft of this Order, all filed;

The Court orders:

Validation and Abridgment of Service

1. Service of the Notice of Application on behalf of System Built Developments Inc. ("**SBDI**") and the materials filed in support thereof (collectively, the "**Application Materials**") by electronic mail or facsimile upon those parties listed on the Service List established in these proceedings shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials shall be and is hereby deemed to be timely and sufficient.

Order Authorizing and Directing the NOI Trustee to Disburse Asset Sale Proceeds

2. Pursuant to subsection 187(5) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and upon reviewing the Order of the Honourable Justice R.S. Smith dated November 21, 2014 (the "**Sale Approval Order**"), Deloitte Restructuring Inc., the Trustee appointed pursuant to the notice of intention to make a proposal to creditors (the "**NOI**") pursuant to section 50.4 of the BIA filed by SBDI in these proceedings, (the "**NOI Trustee**") shall be and is hereby authorized and directed to disburse the "net sale proceeds of the SBDI Asset Sales" referred to in paragraph 5 of the Sale Approval Order ~~and presently held in trust by the NOI Trustee in the amount of \$50,841.25~~ (the "**Net Sale Proceeds**") as follows, namely:

- (a) forthwith to Prairiewind Woodworking Machinery Imports, the sales consultant engaged by SBDI to conduct the SBDI Asset Sales to which the Net Sales Proceeds relate (the "**Sales Consultant**"), in the amount of \$8,878.54 in regard to sales commissions thereby earned by the Sales Consultant (the "**Commission Amount**"); and

- (b) forthwith upon determination by the Trustee of all Wages Claims (as that term is defined in the Claims Process Order dated January 26, 2015) in accordance with the Claims Process Order (each, a "**Determined Wages Claim**" and collectively, the "**Determined Wages Claims**"), to each Claimant (as that term is defined in the Claims Process Order) having a Determined Wage Claim in the amount of such Claimant's Determined Wage Claim, net of the Superintendent's levy pursuant to subsections 60(4) and 147 of the BIA.

Order Varying Paragraph 5 of the Sale Approval Order

3. Pursuant to section 187(5) of the BIA, paragraph 5 of the Sale Approval Order shall be and is hereby varied such that the reference contained therein to the "net sale proceeds of the SBDI Asset Sales" shall be interpreted to mean the net proceeds of the SBDI Asset Sales after payment by SBDI to the Sales Consultant (and any other sales consultant(s) engaged by SBDI) of the amount of any and all sales commissions earned by any such sales consultant(s) in regard to such SBDI Asset Sales, together with any other reasonable costs of such SBDI Asset Sales.

ISSUED at Saskatoon, in the Province of Saskatchewan, this "4th" day of February, 2015.

"Diane Papuzynski"
~~(Deputy)~~ Local Registrar
"✓DP✓"

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: MacPherson Leslie & Tyerman LLP
Name of lawyer in charge of file: Jeffrey M. Lee, Q.C. and Mike Russell
Address of legal firms: 1500 - 410 22nd Street, Saskatoon SK S7K 5T6
Telephone number: (306) 975-7100
Fax number: (306) 975-7145
E-mail address: JMLee@mlt.com / MRussell@mlt.com
File No: 58502.1

public auction and to execute such documents and to perform such acts as may be reasonably required in order to complete the sale of such Subject Equipment.

Payment By Bird Construction Ltd. of Receivable to the Order of the Company

4. Subject to paragraphs 4A and 4B hereof, Bird shall pay to the order of the Company the amount of \$500,000.00 in regard to an account receivable owed by Bird to the Company (the "**Bird Receivable**") by Bird making the following payments on the following dates, namely:
 - (a) \$63,254.06 to Inland, in the manner and on the date prescribed at paragraph 7 hereof; and
 - (b) \$436,745.94 to the Proposal Trustee forthwith.
- 4A. On or before October 1, 2015, Bird shall deliver to counsel for the Company (with a copy to the Proposal Trustee) a detailed accounting (supported by appropriate backup documentation) (the "**Bird Accounting**") of:
 - (a) the exact amount of the Bird Receivable; and
 - (b) the exact amount of the legal fees which Bird claims to be entitled to set off against the Bird Receivable (the "**Bird Legal Fees**").
- 4B. Upon the delivery by Bird to the Company of the Bird Accounting:
 - (a) in the event that the Bird Accounting identifies an underpayment to the Company of the Bird Receivable having been made by Bird, the Company shall have the right to bring this matter back to Court for further advice and direction of the Court regarding such underpayment by Bird to the Company of the Bird Receivable; and
 - (b) in the event that the Bird Accounting identifies an overpayment to the Company of the Bird Receivable having been made by Bird, Bird shall have the right to bring this matter back to Court for further advice and direction of the Court regarding such overpayment by Bird to the Company of the Bird Receivable.

Approval of Interim Distribution to Canada Revenue Agency

5. The Proposal Trustee shall be authorized and directed to pay to CRA the amount of \$573,646.21 (the "**CRA Payment Amount**") on account of the following claims of CRA, namely:
 - (a) \$445,251.39 in regard to the secured employee portion of its deemed trust source deductions claim, which claim comprises the following amounts:

Income Tax Deducted:	\$373,963.72
Employee Portion of CPP:	\$51,258.77
Employee Portion of EI:	\$20,028.90; and
 - (b) \$128,394.82 in regard to its GST property claim pursuant to a Requirement to Pay dated April 9, 2015.
6. Payment of the CRA Payment Amount shall be effected by the Proposal Trustee from the following sources, namely:

- (a) the amount of \$436,745.94 shall be paid from the portion of the Bird Receivable paid to the Proposal Trustee in the same amount pursuant to paragraph 4(b) hereof; and
- (b) the balance of the CRA Payment Amount, being \$136,900.21, shall be paid from funds paid by the Company to the Proposal Trustee on or before September 24, 2015.

Approval of Interim Distribution to Inland Aggregates

- 7. Upon the expiry of the ten-day appeal period pursuant to BIA Rule 31(1), Bird shall be authorized and directed to pay to Inland the amount of \$63,254.06 (the "**Inland Payment**") on account of and in full satisfaction of a Written Notice of Lien and registered Claim of Lien, each dated May 26, 2015, in regard to lands legally described as Surface Parcel #203103491 Blk/Par D Plan No. 102178548 Extension 0, and shall further be directed to notify the Proposal Trustee once such Inland Payment has been made.
- 8. Upon receiving notification from Bird that the Inland Payment has been made, the Proposal Trustee shall notify the Registrar of the Court of Queen's Bench, Judicial District of Regina, of the making of such Inland Payment, whereupon the Lien Bond issued by Travelers Insurance Company of Canada in the amount of \$146,792.10 posted to the credit of Q.B. No. 1449 of 2015 shall be returned to Paul J. Harasen, lawyer for Bird.

Approval of Interim Distribution to Pillar Capital Corp.

- 9. The Proposal Trustee shall be authorized and directed to pay to Pillar Capital Corp. (the "**Interim Financing Lender**") all amounts owing by the Company to the Interim Financing Lender in regard to the Interim Financing (as that term is defined at paragraph 2 of the Interim Financing Charge Order dated April 22, 2015) in accordance with the priorities set forth in such Interim Financing Charge Order.

Approval of Interim Distribution to Secured Creditors

- 10. The Proposal Trustee shall be authorized and directed to pay from the net proceeds of the sale of the BEL Equipment (as that term is defined at paragraph 3 of the June 30, 2015 Order) and the Subject Equipment at auction (collectively, the "**Net Auction Proceeds**") to each of the following secured creditors of the Company whose secured claim is determined to be valid and payable in first priority position the corresponding amounts below:

GE Canada Equipment Financing G.P.	\$2,578,594.00
Redhead Equipment	\$20,227.00
Element Financial Corporation	\$190,865.00
Scotiabank	\$30,951.00
National Leasing Group Inc.	\$8,383.00
Coast Capital Equipment Finance Ltd.	\$69,202.00
Conexus Credit Union 2006 – specific charge	\$23,643.00

11. The Proposal Trustee shall be authorized and directed to distribute to Conexus Credit Union 2006 any additional funds remaining from the Net Auction Proceeds after payment to the secured creditors of the amounts set forth at paragraph 10 hereof.
12. Any party named in this Order shall have leave to apply to Court for advice and directions regarding execution or interpretation of this Order and the carrying out of their respective obligations under this Order.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 25th day of September, 2015.


(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	MacPherson Leslie & Tyerman LLP
Name of lawyer in charge of file:	Jeffrey M. Lee, Q.C. and Mike Russell
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File Number:	60152.1

COURT FILE NUMBER Q.B. No. 885 of 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANTS KOLSY HOMES LTD. and
RIVAIRO CAPITAL CORPORATION

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, c C-36, AS AMENDED (the "CCAA")**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF KOLSY HOMES LTD. and RIVAIRO CAPITAL CORPORATION**

ORDER (Approval, Vesting and Distribution Order—Unit 82)

Before the Honourable Madam Justice A. R. Rothery in Chambers this 24th day of April, 2019.

UPON THE APPLICATION of Mike Russell, counsel on behalf of the Applicant, Rivairo Capital Corporation, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Applicant, Rivairo Capital Corporation ("**Rivairo**"), and 2049905 Alberta Ltd. (the "**Purchaser**"), dated May 2, 2018 (the "**Sale Agreement**"), and upon reading the Sale Endorsement Certificate in regard to the Transaction, the Order of the Honourable Madam Justice A.R. Rothery dated February 26, 2019 (the "**Fifth Extension Order**"), and this draft Order, all filed:

The Court Orders:

SERVICE

1. Pursuant to paragraph seven of the Fifth Extension Order, and upon hereby being advised by counsel to the Applicant and thereby being satisfied that no Encumbrance (as that term is defined at paragraph eight of the Fifth Extension Order) has been registered subsequent to issuance of the Fifth Extension Order, no person is required to have been served with notice in relation to the Order sought herein.

APPROVAL OF TRANSACTION

2. The Transaction, as contemplated by the Sale Agreement, concerning the sale of real property located in the City of Airdrie, Alberta, legally described as Condominium Plan 1511490, Unit 82, and 55 undivided one ten thousand shares in the common property excepting all mines and minerals, being title number 191 059 277 +33 (the "**Purchased Asset**"), by Rivairo to the Purchaser for the purchase price contained in the Sale Agreement (the "**Purchase Price**"), is hereby authorized and approved.

VESTING OF PROPERTY

3. Upon the Monitor determining that the Transaction has closed to the satisfaction of the Monitor and on terms substantially as approved by this Honourable Court pursuant to this Order, the Monitor shall file with the Court a certificate substantially in the form set out at Schedule "A" hereto (the "**Closing Certificate**"), whereupon all of the right, title and interest of Rivairo in and to the Purchased Asset shall vest absolutely in the name of the Purchaser's nominees, jointly, **Zeeshan Jamil and Nerisa Helican** (collectively, the "**Nominee**"), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, certificates of *lis pendens*, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- a. any encumbrances or charges created by Order of this Court;
- b. any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
- c. any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
- d. those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements and restrictive covenants listed in Schedule "C" (collectively, the "**Permitted Encumbrances**")),

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Asset are hereby expunged, discharged and terminated as against the Purchased Asset.

4. Upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized to accept a copy of this Order as though it was an original and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Nominee clear title to the Purchased Asset, subject only to Permitted Encumbrances. Without limiting the foregoing:
- a. the Province of Alberta's Registrar of Land Titles ("**Land Titles Registrar**") shall and is hereby authorized, requested and directed to forthwith:
 - i. cancel the existing Certificate of Title for the Purchased Asset;
 - ii. issue a new Certificate of Title for the Purchased Asset in the name of the Nominee;

- iii. transfer to the new Certificate of Title the existing instruments listed in Schedule "C", to this Order, and to issue and register against the new Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in Schedule "C"; and
 - iv. discharge and expunge from the new Certificate of Title the Encumbrances listed in Schedule "B" to this Order and discharge and expunge from the new Certificate of Title any Claims, including Encumbrances (but excluding Permitted Encumbrances), which may be registered after the date of the Fifth Extension Order against the existing Certificate of Title to the Purchased Asset;
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against the Purchased Asset of any Claims, including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance of the Sale Agreement.
7. Upon delivery of a copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act, RSA 2000, c.L-7* and notwithstanding that the appeal period in respect of this Order has not elapsed.
8. Except as expressly provided for in the Sale Agreement, neither the Purchaser nor its Nominee shall have, by completion of the Transaction, liability of any kind whatsoever in respect of any Claims against Rivairo.
9. Upon completion of the Transaction, Rivairo and all persons who claim by, through or under Rivairo in respect of the Purchased Asset, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Asset, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Asset, and to the extent that any such persons or entities remain in the possession or control of any part of the Purchased Asset, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Asset, they shall forthwith deliver possession thereof to the Nominee.
10. The Nominee shall be entitled to enter into and upon, hold and enjoy the Purchased Asset for its own use and benefit without any interference of or by Rivairo, or any person claiming by, through or against Rivairo.

PAYMENT OF PURCHASE PRICE

11. On a date as mutually determined between the Monitor and the Purchaser (the “Closing Date”), the Purchaser shall pay to the Monitor the Purchase Price.
12. The net proceeds from the Transaction, less all reasonable fees, costs, disbursements, Realtors’ commissions required to close the Transaction, shall stand in the place and stead of the Purchased Asset and, from and after the delivery of the Closing Certificate, all Encumbrances shall attach to the net proceeds from the Transaction ranking in the same priority that the Encumbrances had prior to the sale of the Purchaser Asset as if Rivairo had not sold the Purchased Asset and had remained the registered owner thereof.
13. The Monitor may rely on written notices from Rivairo or the Purchaser regarding the fulfilment or, if applicable, waiver of conditions to closing the Transaction and shall have no liability with respect to the delivery of the Closing Certificate.

DISTRIBUTION

14. The Monitor is authorized and directed to distribute the net proceeds described herein in accordance with the ordering of charges as set out in paragraph 9 of the January 17, 2019, Fourth Extension, Interim Financing, and Subdivision Order granted by the Honourable Madam Justice A.R. Rothery in these proceedings.
15. Upon payment of the amounts set out in paragraph 14 of this Order, all of the Encumbrances shall cease to attach to the net proceeds from the Transaction.

MISCELLANEOUS MATTERS

16. Notwithstanding:
 - a. the pendency of these proceedings and any declaration of insolvency made herein;
 - b. the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the “BIA”), in respect of Rivairo, and any bankruptcy order issued pursuant to any such applications;
 - c. any assignment in bankruptcy made in respect of Rivairo; and
 - d. the provisions of any federal or provincial statute,

the vesting of the Purchased Asset in the Nominee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Rivairo and shall not be void or voidable

by creditors of the Rivairo, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. Rivairo, the Monitor, the Purchaser, the Nominee and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

18. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist Rivairo, the Purchaser, the Nominee or their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist in carrying out the terms of this Order.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 25th day of April 2019.


DEPUTY LOCAL REGISTRAR

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of Firm:	The W Law Group LLP
Name of lawyer in charge of file:	Mike Russell
Address of legal firm:	110-21 st Street East Saskatoon, SK, S7K 0B6
Telephone number:	(306) 244-2242
Facsimile:	(306) 652-0332
Email:	mrussell@wlawgroup.com

SCHEDULE "A"

CLOSING CERTIFICATE

To: _____ (the "Purchaser"),
c/o _____

And to: Rivairo Capital Corporation ("Rivairo"), c/o: Mike Russell and Michelle Tobin, the W
Law Group LLP, Suite 300, 110 – 21st Street East, Saskatoon, SK S7K 0B6

Re: Unit _____

TAKE NOTICE THAT, pursuant to paragraph 5 of the Order of the Honourable Madam Justice A.R. Rothery dated October 26, 2018, (the "Order"), The Bowra Group Inc. (the "Monitor"), the Monitor of Rivairo appointed pursuant to the Initial Order issued in these proceedings under the *Companies' Creditors Arrangement Act* on July 9, 2018, by the Honourable Madam Justice A.R. Rothery, hereby confirms that the sale by Rivairo to the Purchaser of the Lands (as that term is defined at paragraph 4 of the Order) has closed to the satisfaction of the Monitor and pursuant to the terms of the Order effective as of the date of this Closing Certificate.

DATED this ___ day of _____, 201__.

THE BOWRA GROUP INC.
in its capacity as Monitor of
RIVAIRO CAPITAL CORPORATION
and not in its
personal capacity

Per:

Kristin Gray

SCHEDULE "B"
Non-Permitted Encumbrances

	Interest	Holder	Registration Number
a.	MORTGAGE	GENCAP EQUITY #11 INC.	131 018 602
b.	CAVEAT	THE CITY OF AIRDRIE	141 041 684
c.	CAVEAT	THE CITY OF AIRDRIE	141 092 117
d.	MORTGAGE	DI-AD INVESTMENT CORPORATION OF CANADA	151 204 886
e.	CAVEAT	DI-AD INVESTMENT CORPORATION OF CANADA	151 204 887
f.	POSTPONEMENT	N/A	151 210 567
g.	CAVEAT - RE: AMENDING AGREEMENT	DI-AD INVESTMENT CORPORATION OF CANADA LTD.	161 122 952
h.	POSTPONEMENT	N/A	161 175 430
i.	MORTGAGE	KV CAPITAL INC.	171 109 506
j.	CAVEAT RE: ASSIGNMENT OF RENTS AND LEASES	KV CAPITAL INC.	171 109 507
k.	POSTPONEMENT	N/A	171 160 852
l.	POSTPONEMENT	N/A	171 160 853
m.	AMENDING AGREEMENT	N/A	171 160 854
n.	BUILDER'S LIEN	RIMROCK LANDSCAPING & PROPERTY MGMT LTD.	181 097 573
o.	BUILDER'S LIEN	CREATIVE DOOR SERVICES LTD.	181 100 435
p.	BUILDER'S LIEN	BMP CONSTRUCTION MANAGEMENT LTD	181 123 544
q.	BUILDER'S LIEN	THE WALLIN COMPANY INC.	181 136 782
r.	BUILDER'S LIEN	M D MASONRY INC.	181 139 745

s.	CERTIFICATE OF LIS PENDENS	N/A	181 143 809
t.	BUILDER'S LIEN	WOODCRAFT KITCHEN CABINETS LTD.	181 144 077
u.	BUILDER'S LIEN	QUALITY FLOORING DESIGN CENTRE INC.	181 145 114
v.	BUILDER'S LIEN	GRANITE COUNTRY INC.	181 145 490
w.	BUILDER'S LIEN	ARTISTIC STAIRS LTD.	181 149 209
x.	BUILDER'S LIEN	ASTORIA ELECTRIC INC.	181 154 912
y.	CERTIFICATE OF LIS PENDENS	N/A	181 165 434
z.	CERTIFICATE OF LIS PENDENS	N/A	181 233 495
aa.	CERTIFICATE OF LIS PENDENS	N/A	181 265 027
bb.	CERTIFICATE OF LIS PENDENS	N/A	181 274 576
cc.	CERTIFICATE OF LIS PENDENS	N/A	191 018 370

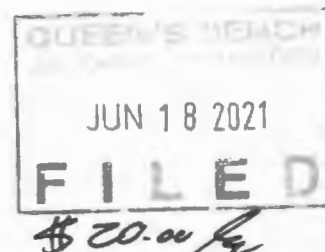
SCHEDULE "C"**Permitted Encumbrances**

	Interest	Holder	Registration Number
a.	CAVEAT	N/A	021 303 263
b.	RESTRICTIVE COVENANT		081 370 161
c.	TITLE LOCK ORDER	CITY OF AIRDRIE	
d.	RESTRICTIVE COVENANT		151 138 623

COURT FILE NUMBER Q.B. No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36,
AS AMENDED (the "CCAA")

AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF
CONTOUR REALTY INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF 101098672 SASKATCHEWAN LTD., MORRIS
INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD., and MORRIS INDUSTRIES (USA) INC.

SALE APPROVAL AND VESTING ORDER
(Virden Lands)

Before the Honourable Mr. Justice R.W. Elson in Chambers the 18th day of June, 2021.

Upon the application of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") within these proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c c-36 (the "**CCAA**") by Contour Realty Inc. ("**Contour**" or the "**Debtor**") pursuant to the Initial Order of the Honourable Mr. Justice R.S. Smith granted in the CCAA Proceedings on January 8, 2020 (the "**Initial Order**"), the Amended and Restated Initial Order of the Honourable Mr. Justice R.S. Smith granted in the CCAA Proceedings on January 16, 2020 (the "**ARI Order**") and pursuant to the Order (Enhancement of Monitor's Powers) of the Honourable Mr. Justice R.W. Elson granted in the CCAA Proceedings on February 18, 2020 (the "**EMP Order**"), and upon hearing from counsel for other interested parties, and upon reading the Notice of Application of the Monitor dated June 15, 2021 (the "**Notice of Application**"), the Seventeenth Report of the Monitor dated June 15, 2021 (the "**Seventeenth Report**"), the Confidential Appendix to the Seventeenth Report of the Monitor (the "**Confidential Seventeenth Report**"), and a proposed Draft Order, all filed, and the pleadings and proceedings had and taken herein:

The Court Orders:

SERVICE

1. Service of the Notice of Application on behalf of the Monitor and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.

APPROVAL OF TRANSACTION

2. The sale transaction (the "**Transaction**") contemplated by a fully executed Offer to Purchase (the "**Sale Agreement**") between Contour, by the Monitor, on one hand, and NE20 Developments Ltd. (the "**Purchaser**"), on the other, dated March 23, 2021 and appended (in redacted form) to the Seventeenth Report and (in unredacted form) to the Confidential Seventeenth Report, for the sale to the Purchaser (or its nominee) of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") is declared to be commercially reasonable and in the best interests of the Debtor and its creditors

and other stakeholders and is hereby authorized and approved, with such minor amendments as the Monitor may deem necessary.

3. The Monitor, on behalf of Contour, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the Purchased Assets may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee), subject to such amendments as the Monitor and the Purchaser may agree upon, provided that any such amendments do not materially affect the purchase price set out in the Sale Agreement (the "**Purchase Price**").

VESTING OF PROPERTY

4. Upon the Monitor determining that the Transaction has closed to its satisfaction and on terms substantially as approved by this Honourable Court pursuant to this Order, the Monitor shall deliver to the Purchaser (or its nominee) a Monitor's certificate substantially in the form set out in **Schedule "A"** hereto (the "**Monitor's Certificate**").
5. The Monitor may rely on written notices from the Purchaser regarding fulfillment or, if applicable, waiver of conditions to closing of the Transaction under the Sale Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
6. Upon delivery of the Monitor's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, save and except for the encumbrances listed in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "**Encumbrances**") and all rights of others, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the ARI Order; and
 - (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act, 1993* SS 1993, c P-6.2, *The Personal Property Security Act*, CCSM c P35 or any other personal property registry system.

and, for greater certainty, this Court orders that all of the Encumbrances (save and except for the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. Upon delivery of the Monitor's Certificate to the Purchaser, the Monitor shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry and/or the Manitoba Personal Property Registry as may be reasonably required to conclude the Transaction.
8. Upon registration in the Brandon Land Titles Office (the "**LTO**") of a certified copy of this Order, a copy of the Monitor's Certificate, and a Request/Transmission in the form prescribed by the *Real Property Act*, CCSM c R30 duly executed by the Monitor or its solicitor or the Purchaser or its solicitor, the District Registrar of the LTO (the "**LTO Registrar**") is hereby directed to cancel title

2970852/2, and to issue new titles in the name of NE20 Developments Ltd. as the owner of the subject real property in fee simple, namely:

LOT 1 PLAN 63580 BLTO

EXC ALL MINES AND MINERALS AS SET FORTH IN TRANSFERS 96278, 96425 AND 84-6945

IN SW 1/4 28-10-26 WPM

(the "**Real Property**"), in fee simple.

- 8A. This Order shall be entered by the LTO Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived in regard to paragraphs 4 to 18 of this Order.
9. Any and all registration charges and fees payable in regard to the Land Titles Application shall be to the account of the Purchaser.
10. For the purposes of determining the nature and priority of the Encumbrances:
 - (a) the net proceeds from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets; and
 - (b) from and after the delivery of the Monitor's Certificate to the Purchaser, all Encumbrances and all rights of others shall attach to the Net Sale Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to closing of the Transaction.
11. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
12. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
13. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
14. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Monitor or the Debtor.
15. Forthwith after the delivery of the Monitor's Certificate to the Purchaser (or its nominee), the Monitor shall file a copy of the Monitor's Certificate with the Court, and shall serve a copy of the Monitor's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.
16. [Intentionally deleted.]

17. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to such applications;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order and the obligations of the Debtor under the Sale Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

MISCELLANEOUS MATTERS

19. The Monitor, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction, including, without limitation, an application to the Court to deal with interests which are registered against title to the Real Property after the time of the granting of this Order.
20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
21. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the ARI Order.

ISSUED at Saskatoon, Saskatchewan, this 18 day of June, 2021.



(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

Name of firm: MLT Aikins LLP
Lawyer in charge of file: Jeffrey M. Lee, Q.C. and Paul Olfert
Address of firm: Suite 1201, 409 - 3rd Avenue South, Saskatoon SK S7K 5R5
Telephone number: 306.975.7100
Email address: JMLee@mltaikins.com / POlfert@mltaikins.com
File No: 35572.8

SCHEDULE "A"
FORM OF MONITOR'S CERTIFICATE

COURT FILE NUMBER **Q.B. No. 1884 of 2019**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE **SASKATOON**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36,
AS AMENDED (the "CCAA")

AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF
CONTOUR REALTY INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF 101098672 SASKATCHEWAN LTD., MORRIS
INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD., and MORRIS INDUSTRIES (USA) INC.

MONITOR'S CERTIFICATE

RECITALS

- A. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Approval and Vesting Order.
- B. Pursuant to the Amended and Restated Initial Order of the Honourable Mr. Justice R.S. Smith granted in these proceedings on January 16, 2020 (the "**ARI Order**"), Alvarez and Marsal Canada Inc. was appointed monitor (the "**Monitor**") within these proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c c-36 (the "**CCAA**") by 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., Contour Realty Inc. ("**Contour**") and Morris Industries (USA) Inc. (collectively, "**Morris Group**");
- C. Pursuant to the Order (Enhancement of Monitor's Powers) of the Honourable Mr. Justice R.W. Elson granted in the CCAA Proceedings on February 18, 2020 (the "**EMP Order**"), the Monitor was empowered to carry out certain powers and to exercise certain rights for and on behalf of Morris Group in the manner more specifically described therein;
- D. Pursuant to the Sale Approval and Vesting Order granted within the CCAA Proceedings on **[DATE]**, 2021 (the "**Sale Approval and Vesting Order**"), the Court approved an Offer to Purchase dated March 23, 2021 (the "**Sale Agreement**") between Contour Realty Inc., by and through the Monitor ("**Contour**"), on the one hand, and NE20 Developments Ltd. (the "**Purchaser**"), on the other hand, for the sale to the Purchaser of the right, title and interest of Contour to the assets described in the Sale Agreement (the "**Purchased Assets**") and provided for the vesting in the Purchaser of the right, title and interest of Contour in and to the Purchased Assets, which vesting is to be effective with respect to such Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; and (ii) that the conditions to closing as set out in Sections 8-10 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

THE MONITOR CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 8-10 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser (or its nominee);
3. The Transaction has been completed to the satisfaction of the Monitor; and
4. This Certificate was delivered by the Monitor at [Time] on [Date].

ALVAREZ & MARSAL CANADA INC., in its capacity as Monitor of Contour Realty Inc., and not in its personal capacity.

Per; _____
Name:
Title:

SCHEDULE "B"
PURCHASED ASSETS

Certain real property in or near the Town of Virden, in the Province of Manitoba, legally described as follows:

LOT 1 PLAN 63580 BLTO
EXC ALL MINES AND MINERALS AS SET FORTH IN TRANSFERS 96278, 96425
AND 84-6945
IN SW 1/4 28-10-26 WPM

SCHEDULE "C"
PERMITTED ENCUMBRANCES

Caveat No. 74101/2 registered November 4, 1948 in favour of Rio Bravo Oil Co. Ltd.

Caveat No. 98232/2 registered December 14, 1953 in favour of Canadian Superior Oil of California Ltd.

Caveat No. 98453/2 registered December 29, 1953 in favour of Trans-Field Developments Ltd

Caveat No. 105670/2 registered March 15, 1955 in favour of Trans-Prairie Pipelines Ltd

Caveat No. 108065/2 registered July 21, 1955 in favour of Canadian Superior Oil of California Ltd.

Caveat No. R49041/2 registered January 14, 1966 in favour of Trans-Prairie Pipelines Ltd

Caveat No. R50864/2 registered May 9, 1966 in favour of The Manitoba-Hydro Electric Board

Caveat No. 84-6683/2 registered August 8, 1984 in favour of The Manitoba Telephone System

Assignment of Caveat No. 91-3201/2 registered April 8, 1991 to 158435 Canada Ltd.

Assignment of Caveat No. 91-3202/2 registered April 8, 1991 to Corvair Oils Ltd.

Caveat No. 1026292/2 registered June 20, 1997 in favour of MTS Netcom Inc.

Request to Issue Notice No. 1050648/2 registered September 10, 1998 in favour of Manitoba Government Services

Assignment of Caveat No. 1059697/2 registered March 11, 1999 from Norcen Energy Resources Limited to Virden Pipelines Inc.

Assignment of Caveat No. 1059779/2 registered March 12, 1999 from Norcen Energy Resources Limited to Virden Pipelines Inc.

Partial Discharge No. 1060835/2 registered March 31, 1999 from Enbridge Pipelines (Virden) Inc.

Caveat No. 1126874/2 registered March 10, 2003 in favour of Manitoba Hydro-Electric Board

Easement No. 1351685/2 registered December 19, 2013 in favour of Tundra Oil & Gas Limited