

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

BETWEEN

MACQUARIE EQUIPMENT FINANCE LIMITED

Applicant

- and -

**VALIDUS POWER CORP., IROQUOIS FALLS POWER CORP., BAY
POWER CORP., KAP POWER CORP., VALIDUS HOSTING INC.,
KINGSTON COGEN LIMITED PARTNERSHIP AND
KINGSTON COGEN GP INC.**

Respondents

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

**FACTUM OF THE APPLICANT
(Receivership Order)**

July 31, 2023

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TABLE OF CONTENTS

	Page
PART I - OVERVIEW	1
PART II - THE FACTS.....	2
A. The Debtors' business.....	2
B. Sale and leaseback transaction.....	3
C. The Debtors' mismanagement and defaults under the Lease Transaction Documents	6
D. The Applicant's significant efforts to accommodate the Debtors	11
E. Other known secured creditors	14
F. The Applicant's collateral is at risk	15
PART III - THE ISSUES	16
PART IV - THE LAW	17
A. This Court has jurisdiction to appoint the Receiver	17
B. It is just and convenient for this Court to appoint the Receiver	19
C. The terms of the proposed receivership order are appropriate	25
PART V - ORDER REQUESTED	25
 SCHEDULE A	
 SCHEDULE B	
 APPENDIX A – Chronological Summary of Key Events	
 APPENDIX B – <i>PricewaterhouseCoopers Inc. v Canada Fluorspar (NL) Inc.</i>, 2022 NLSC 48	

PART I - OVERVIEW

1. This Factum is filed by Macquarie Equipment Finance Limited (the “**Applicant**”) in support of its application for the appointment a receiver and manager pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* (Ontario). The Applicant seeks the appointment of KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) over all of the undertakings, properties and assets of the respondents to this application (collectively, the “**Debtors**”).

2. Since the Applicant entered into a sale and leaseback transaction with the Debtors in April 2022, numerous critical operational and financial problems with the Debtors have emerged that have undermined the Applicant’s trust in the Debtors’ management. The Debtors are indebted to the Applicant in the total outstanding amount of \$55,598,575 as of July 31, 2023. In addition to monetary defaults, the Debtors have committed numerous other significant financial and operational defaults under the Lease Transaction Documents (as defined below), including failing to pay and remit taxes, incurring a large lien in respect of unpaid taxes, allegedly breaching an agreement with a key customer, failing to properly maintain books and records and failing to maintain insurance. The Debtors’ principals have also allegedly misappropriated and failed to return funds from a bank account that they were erroneously granted access to, and allegedly failed to provide benefits and RRSP contributions to their unionized employees in accordance with a collective bargaining agreement.

3. The Applicant has made significant efforts to accommodate the Debtors, including: (i) providing them a four-month rent holiday in February of this year; (ii) facilitating, and paying for, an unsuccessful out-of-court sale and marketing process in respect of one of the Debtors; and (iii) paying in excess of \$1,421,370.38 to critical suppliers, insurers and counterparties on the

Debtors' behalf in order to prevent the Debtors' business from destabilizing, which amount was subsequently repaid by way of a set-off. None of these accommodations led to a viable path forward.

4. The Applicant's collateral is at risk, as are the interests of the Debtors' other stakeholders. The proposed receivership is necessary to resolve these issues and bring much-needed stability to the Debtors' business. As part of the proposed receivership, the Applicant anticipates that, subject to this Court's approval at a later date, it will submit a stalking horse bid for substantially all of the Debtors' assets in connection with a sale and investment solicitation process. If successfully implemented, that transaction is expected to provide a going-concern solution and preserve the Debtors' business for the benefit of the Debtors' stakeholders.

5. The statutory requirements for the appointment of a receiver are a matter of well-settled law, and the Applicant submits that it meets all such requirements. The appointment of a receiver over the Debtors is just and convenient in these circumstances.

PART II - THE FACTS

6. For the Court's convenience, a chronological summary of the key events that led to the Applicant's decision to seek the appointment of a receiver over the Debtors is attached as **Appendix "A"** to this Factum. Capitalized terms used in this Factum that are not otherwise defined have the meanings given to them in the affidavit of Joshua Hamilton Stevens, sworn July 31, 2023 (the "**Stevens Affidavit**").

A. The Debtors' business

7. The Validus Group is a power generation company that generates and sells power to the Independent Energy System Operator ("**IESO**") as a participant in its "capacity auction" market.

The Validus Group's operations consist of four power plants located in the Ontario regions of North Bay, Kapuskasing, Iroquois Falls and Kingston. They also own a non-operational data centre in North Bay.¹

8. Validus Power Corp. ("**Validus Parent**") is a holding company whose primary or sole assets consist of the shares or units held in each of the other Debtors, all of which are Validus Parents' direct or indirect wholly-owned subsidiaries.² Four of those Debtors, in turn, own the Validus Group's operating assets corresponding to the four power plants noted above (except, as described below, the turbines, plant and equipment for the Iroquois Falls plant, which is owned by the Applicant).³ The Applicant understands that Validus Hosting, the only subsidiary that does not own operating power plant assets, was incorporated in 2022 for the purposes of holding certain material contracts but does not currently have any material assets.⁴

B. Sale and leaseback transaction

9. The Applicant's relationship with the Validus Group started in April 2022 when the parties entered into a sale and leaseback transaction with the Debtors in respect of the Iroquois Falls power plant.⁵ All of the agreements, documents and instruments relating to the sale and leaseback transaction are referred to herein as the "**Lease Transaction Documents**".

¹ Affidavit of Joshua Hamilton Stevens sworn July 31, 2023, para 7, Tab 2 of the Application Record of the Applicant ("**Stevens Affidavit**").

² Stevens Affidavit, para 6.

³ Stevens Affidavit, para 20.

⁴ Stevens Affidavit, para 30.

⁵ Stevens Affidavit, para 31.

10. Under those arrangements, the Applicant purchased substantially all of the turbines, plant and equipment used in the Iroquois Falls power plant operations from IFPC and paid a total purchase price of \$45,000,000 plus HST.⁶

11. The Applicant leased those purchased assets back to IFPC under a lease agreement (the “**Lease Agreement**”), which required IFPC to make regular monthly rent payments and to pay all other amounts when due under the other Lease Transaction Documents.⁷ Additionally, if IFPC or any of the other Debtors, as guarantors (as described below), default on their obligations under the Lease Transaction Documents, the Applicant is entitled to accelerate all payments due under the Lease Agreement as liquidated damages and demand payment of same (the “**Accelerated Payments**”).⁸

12. Each of the other Debtors (collectively, the “**Guarantors**”) guaranteed all of IFPC’s and each of the other Guarantors’ obligations under the Lease Agreement and the other Lease Transaction Documents. All of the Debtors except for Validus Hosting provided unlimited guarantees of those obligation, and Validus Hosting provided a limited recourse guarantee of those obligations.⁹

13. All of the Debtors provided the Applicant with first-ranking security in substantially all of their real and personal property, assets and undertaking, except for: (i) Validus Parent, which provided security over all of the issued and outstanding shares and units in each of the other

⁶ Stevens Affidavit, para 31(a).

⁷ Stevens Affidavit, para 31(b).

⁸ Stevens Affidavit, para 31(b); Amended and Restated Lease Agreement, s 13.1(f), Exhibit C to the Stevens Affidavit.

⁹ Stevens Affidavit, para 37; Amended and Restated Guarantee, s 1.1, Exhibit G to the Stevens Affidavit; Amended and Restated Limited Recourse Guarantee, ss 1.1-1.3, Exhibit H to the Stevens Affidavit.

Debtors, all of which are held by Validus Parent (except for one general partner unit in Kingston LP that is held by Kingston GP); and (ii) Validus Hosting, which provided security over certain assigned material project documents.¹⁰ The Applicant understands that the foregoing collateral constitutes substantially all of the assets of Validus Parent and Validus Hosting.¹¹

14. The Applicant has first-in-time registrations against each of the Debtors under the Ontario PPSA, and against all of the Debtors' real property under the Ontario *Land Titles Act*.¹² The Applicant also has physical possession of all of the shares and units that Validus Parent pledged under the Lease Transaction Documents.¹³

15. As discussed below, the Applicant and the Debtors entered into forbearance arrangements in February 2023 and the Applicant's security was expanded as part of those arrangements. The Applicant was given security over: (i) all of the assets of Kingston LP and Kingston GP; and (ii) all of the shares and units in those entities, which are currently held by Validus Parent (except for one general partner unit in Kingston LP that is held by Kingston GP).¹⁴ While the Applicant amended its registration against Validus Parent under the Ontario PPSA subsequently in time to two creditors' registrations (Toronto-Dominion Bank and Mercedes-Benz, each as discussed below), the only new collateral that Validus Parent granted to the Applicant was the shares and units in Kingston LP and Kingston GP that Validus Parent holds.¹⁵ The Applicant has control

¹⁰ Stevens Affidavit, paras 39, 42 and 43.

¹¹ Stevens Affidavit, paras 20 and 30

¹² Stevens Affidavit, paras 43 and 46.

¹³ Stevens Affidavit, para 40.

¹⁴ Stevens Affidavit, para 33.

¹⁵ Stevens Affidavit, paras 33 and 42.

and possession of those shares and units in Kingston LP and Kinston GP,¹⁶ and therefore has priority over the two new aforementioned registrations in respect of those shares and units.

C. The Debtors' mismanagement and defaults under the Lease Transaction Documents

16. Since the Applicant and the Debtors entered into the sale and leaseback transaction in April 2022, numerous critical operational and financial issues with the Debtors have emerged that have undermined the Applicant's trust in the Debtors' management.

i. Mismanagement and Defaults

17. The Debtors' first default occurred just weeks after the lease transaction, when the Debtors failed to deliver to the Applicant financial and operational reports that the Lease Transaction Documents obligated the Debtors to regularly provide.¹⁷ This failure constituted an event of default under the Lease Transaction Documents.¹⁸

18. The Applicant later learned in late 2022 that certain Debtors had engaged in a dispute with Hut 8 Mining Corp., a customer, regarding a power purchase agreement and lease agreement. Under that dispute, payments contemplated under those agreements had ceased, and Hut 8 alleged that those Debtors had breached those agreements.¹⁹ The Applicant viewed these agreements as an important source of future revenue for the Debtors. Accordingly, the Debtors had given the Applicant covenants in the Lease Transaction Documents that they would comply

¹⁶ Stevens Affidavit, para 40.

¹⁷ Stevens Affidavit, para 77.

¹⁸ Stevens Affidavit, para 78; Amended and Restated Lease Agreement, s 12(i), Exhibit C to the Stevens Affidavit.

¹⁹ Stevens Affidavit, para 73.

with those agreements in all material respects.²⁰ The Debtors' breach of those agreements, if true, constituted a default under the Lease Transaction Documents.²¹

19. Following the Applicant's discovery of Validus Parent's alleged breach of the Hut 8 PPA, the Applicant and the Debtors entered into an arrangement to potentially resolve the default under the Lease Transaction Documents that was caused by such alleged breach (the "**Prepayment Arrangement**"). Under the Prepayment Arrangement, if IFPC made a prepayment of Base Rent plus HST to the Applicant on or by January 16, 2023, the Applicant would: (i) agree that the specific defaults that were caused by Validus Parent's breach of the Hut 8 PPA would be cured under the Lease Transaction Documents; and (ii) release the Debtors from further obligations to comply with the Hut 8 PPA under the Lease Transaction Documents.²²

20. On January 16, 2023, IFPC failed to make that prepayment of Base Rent plus HST.²³ This prompted discussions between the Applicant and the Debtors, which eventually led to the parties entering into forbearance arrangements in February 2023 (as described in the next section below).

21. As part of those forbearance arrangements, an arm's length marketing advisor was engaged and a sale and marketing process was agreed to be undertaken in respect of IFPC. Under that process, the Applicant was granted access to the IFPC's and certain other Debtors' books and records. Upon reviewing those books and records, the Applicant discovered the following

²⁰ Stevens Affidavit, paras 70 and 75; Amended and Restated Participation Agreement, s 4.20, Exhibit B to the Stevens Affidavit; Amended and Restated Lease Agreement, s 12(j), Exhibit C to the Stevens Affidavit.

²¹ *Ibid.*

²² Stevens Affidavit, para 51.

²³ Stevens Affidavit, para 52.

deficiencies (among others), all of which constitute defaults under the Lease Transaction Documents:²⁴

- (a) Deficient Recordkeeping: as a general matter, the Debtors' recordkeeping is extremely deficient, and records relating to the Debtors' finances, operations, contracts and other key items were often incomplete or simply did not exist;²⁵
- (b) Unpaid HST: IFPC never remitted to Canada Revenue Agency any of the \$5,850,000 of HST that the Applicant paid to IFPC as part of the sale and leaseback transaction. There was also no evidence that IFPC, Kingston GP or Kingston LP had made HST filings or remitted HST amounts since March or April 2022;²⁶
- (c) Potential Unremitted Source Deductions: the Debtors' payroll records for June 29 and July 7, 2023 did not list any disbursements corresponding to source deductions being remitted to CRA, despite those same records showing that those amounts were deducted from the employees' payroll;²⁷ and
- (d) Municipal Taxes: the Debtors failed to pay \$109,727 of municipal taxes to the Town of Iroquois Falls, the City of Kapuskasing and the Loyalist Township (Kingston).²⁸

²⁴ Stevens Affidavit, para 54.

²⁵ Stevens Affidavit, para 54(a).

²⁶ Stevens Affidavit, para 54(b).

²⁷ Stevens Affidavit, para 54(c).

²⁸ Stevens Affidavit, para 54(d).

22. Following the commencement of the out-of-court sale and marketing process, on or around March 8, 2023, CRA registered a lien in an amount of \$6,002,211 against certain of the real property corresponding to the Iroquois Falls power plant on account of unpaid taxes.²⁹

23. The Applicant next learned in May 2023 that Canadian Imperial Bank of Commerce (“CIBC”) had made serious allegations that Kingston GP had “erroneously wired \$550,000 from an internal CIBC account” that the Debtors “had no right to access” to Validus Parent in late 2022.³⁰ In a May 12, 2023 letter from CIBC to the Debtors, CIBC alleged that those amounts had still not been repaid, despite the Debtors’ CFO agreeing with CIBC that the Debtors would do so.³¹

24. In June, the next month, the Applicant discovered that the union representing IFPC’s unionized employees had delivered a grievance letter to IFPC and Validus Parent dated May 25, 2023, alleging that those Debtors had failed to provide group benefit coverage and to match and/or remit RRSP contributions for those unionized employees, contrary to the Union’s collective agreement with IFPC.³²

25. The Applicant subsequently learned in June that the Debtors had failed to pay insurance premiums that were required to maintain property and general commercial liability insurance for their power plants.³³ In order to prevent the potentially destabilizing consequences of the Debtors’ insurance coverage lapsing, the Applicant paid a total of \$675,379.60 on the Debtors’

²⁹ Stevens Affidavit, para 45.

³⁰ Stevens Affidavit, para 55; Letter from CIBC’s Counsel dated May 12, 2023, Exhibit X to the Stevens Affidavit.

³¹ *Ibid.*

³² Stevens Affidavit, para 56; Letter from the International Union of Operating Engineers Local 865 dated May 25, 2025, Exhibit Y to the Stevens Affidavit.

³³ Stevens Affidavit, para 57.

behalf to their insurance broker in June and July.³⁴ Those amounts were subsequently repaid to the Applicant on July 24, 2023 through the set-off described in para 29, below.

26. Finally, the Debtors missed three payments of rent and HST in May, June and July 2023. As of July 31, 2023, the Debtors owe the Applicant a total of \$9,605,000 on account of rent and HST in arrears, which amounts remain outstanding as of the date hereof.³⁵

27. In summary, the Debtors have committed the following known defaults under the Lease Transaction Documents: (i) failing to pay when due a total of \$9,605,000 of rent and HST; (ii) failing to deliver regular financial and operational reports; (iii) failing to properly maintain their books and records; (iv) breaching a material contract with one of their customers; (v) failing to pay or remit HST and to pay municipal taxes; (vi) incurring a lien in favour of CRA in an amount of \$6,002,211 as a result of tax arrears; (vii) potentially failing to remit source deductions; and (viii) failing to pay insurance premiums required to maintain insurance coverage over their assets and business. The Debtors have acknowledged and admitted to defaults (i), (iii) and (iv).³⁶

ii. Demand Letters

28. Given the totality of the circumstances, the Applicant concluded that it had no option but to issue demand letters and notices of intention to enforce security pursuant to section 244 of the BIA.³⁷ On June 9, 2023, the Applicant delivered its first set of demand letters to each of the Debtors demanding repayment of all base rent plus HST due and unpaid in May 2023.³⁸ On the

³⁴ Stevens Affidavit, para 58.

³⁵ Stevens Affidavit, para 59.

³⁶ Stevens Affidavit, para 61; Acknowledgment and Reservation of Rights Agreement, Recital C and s 3.2, Exhibit D to the Stevens Affidavit.

³⁷ Stevens Affidavit, para 89.

³⁸ Stevens Affidavit, para 90.

same day, June 9, 2023, the Applicant sent out notices of intention to enforce security pursuant to section 244 of the BIA giving notice to the Debtors of the Applicants' intention to enforce against security.³⁹

29. On July 21, 2023, following IFPC and Kingston LP's receipt of a cash payment from the IESO for power delivered in the capacity market, the Applicant caused IFPC to transfer those payments—a total of \$2,012,950—to an account controlled by the Applicant and applied those amounts to the Debtors' outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents. The Debtors' Chief Financial Officer approved that transfer. The Applicant also delivered a notice of set-off to the Debtors that same day. After the transfer, there remained approximately \$800,000 in the relevant accounts to provide for immediate operational needs.⁴⁰

30. Finally, on July 24, 2023, the Applicant subsequently delivered a fresh set of demand letters demanding repayment of all rent plus HST then outstanding.⁴¹ The Applicant also accelerated the Accelerated Payment under the Lease Agreement and demanded immediate payment of same in accordance with the Lease Transaction Documents. As of July 31, 2023, those Accelerated Payments plus interest totals \$55,598,575 and remain outstanding.⁴²

D. The Applicant's significant efforts to accommodate the Debtors

31. In light of these defaults and other problems, the Applicant has given the Debtors considerable accommodations over the preceding six months. As discussed in this section, the

³⁹ Stevens Affidavit, para 90.

⁴⁰ Stevens Affidavit, para 98.

⁴¹ Stevens Affidavit, para 96.

⁴² Stevens Affidavit, para 9.

Applicant gave the Debtors a four-month rent holiday, helped implement—and paid for—an out-of-court sale and marketing process for the shares of IFPC, and paid on behalf of the Debtors a total of \$1,421,370.38 for critical costs and expenses, including to insurers, that were required to prevent the Debtors' business from destabilizing and suffering irreparable harm.⁴³ The Debtors have also had nearly two months to repay outstanding arrears since the Applicant first demanded those amounts and delivered its section 244 notices on June 9, 2023. The Applicant is no longer willing to accommodate the Debtors;⁴⁴ a receiver and manager is now necessary to stabilize the business and preserve the value of the Applicant's collateral.

i. Rent Holiday and Sale and Marketing Process

32. As noted above, following the Debtors' failure to make a prepayment of rent in January 2023, the Applicant and the Debtors negotiated and entered into forbearance arrangements in February 2023. As part of that forbearance, the Applicant gave the Debtors a four-month "rent holiday", which deferred rent payable on each of February, March, April and May until May 31, 2023.⁴⁵ As consideration, the Applicant was granted security interests in additional collateral in the form of all of the assets of Kingston LP and Kingston GP, along with all of the shares and units in those entities held by Validus Parent.⁴⁶

33. Importantly, the parties agreed to commence an out-of-court sale and marketing process for the sale of all of the shares in IFPC, and an M&A advisor was subsequently retained in March to conduct that process. The Applicant agreed to pay, and did pay, all costs, fees and

⁴³ Stevens Affidavit, paras 80 and 85.

⁴⁴ Stevens Affidavit, para 88.

⁴⁵ Stevens Affidavit, para 80.

⁴⁶ Stevens Affidavit, para 33.

expenses incurred by the Debtors in that marketing process (which amounts the Debtors are required to repay under the Lease Transaction Documents).⁴⁷

34. The sale and marketing process commenced in March 2023, and, by April, four parties had submitted non-binding expressions of interest in IFPC's shares. However, only one bidder made a binding offer, which it ultimately defaulted on. That bidder eventually ceased communications with the M&A advisor, and the sale and marketing process concluded unsuccessfully.⁴⁸

ii. Critical Payments

35. The Applicant has also made numerous payments on behalf of the Debtors on account of critical items, in order to protect its collateral and minimize the risk of potential destabilization of the Debtors and their operations. Those payments included: (i) \$675,379.60 of insurance premiums that were required to prevent the Debtors' insurance coverage from lapsing; and (ii) \$745,990.78 of the Debtors' accounts payable, including for gas transportation services, gas procurement services, legal fees and information technology services.⁴⁹ Those amounts were subsequently repaid to the Applicant on July 24, 2023 through the set-off described above.

36. The Applicant is not willing to continue funding these amounts in the absence of a court-supervised process.⁵⁰

⁴⁷ Stevens Affidavit, para 81.

⁴⁸ Stevens Affidavit, paras 82-84.

⁴⁹ Stevens Affidavit, paras 85-86.

⁵⁰ Stevens Affidavit, para 88.

E. Other known secured creditors

37. In addition to the Applicant, there are three other creditors with registered security interests against certain Debtors or their property:⁵¹

- (a) CRA, which, as noted, registered a lien on March 8, 2023 in an amount of \$6,002,211 on account of unpaid taxes. CRA's lien was registered against two of the property identification numbers (PINs) associated with the Iroquois Falls plant. CRA's registrations were subsequent in time to the Applicant's registrations against those two PINs.
- (b) Toronto-Dominion Bank (TD), which registered a security interest on or around May 10, 2022 against Validus Parent's "accounts" and "other" categories of collateral in the Ontario PPSA registry. As noted, TD's registration was subsequent in time to the Applicant's first registration against Validus Parent, but prior in time to the Applicant's amended registration against Validus Parent.
- (c) Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which registered a security interest on September 1, 2022 against Validus Parent in connection with a motor vehicle in the Ontario PPSA registry. As noted, Mercedes's registration was subsequent in time to the Applicant's first registration against Validus Parent, but prior in time to the Applicant's amended registration against Validus Parent.

38. As noted, while TD's and Mercedes's registrations were prior in time to the Applicant's amended registration against Validus Parent, the only new collateral that Validus Parent granted

⁵¹ Stevens Affidavit, paras 44-46.

to the Applicant at the time of that amended registration was its shares and units in Kingston LP and Kingston GP. The Applicant has control and possession of those shares and units.⁵²

F. The Applicant's collateral is at risk

39. The preceding twelve months illustrate significant mismanagement and a troubling lack of management oversight by the Debtors of their operations. These issues have grown so serious and numerous that the Applicant fears its collateral, and the Debtors' business, are at risk of imminent financial and operational collapse.⁵³

40. The Debtors' management has failed to, and is unable to, repay the substantial indebtedness owing to the Applicant, and the related Lease Transaction Documents have been in default for months.⁵⁴ The Debtors have also failed to satisfy multiple tax claims (including a potential failure to remit source deductions), maintain adequate recordkeeping and, allegedly, provide their unionized employees with benefits and match and/or remit RRSP contributions per the terms of their collective bargaining agreement. There are also serious allegations that the Debtors have misappropriated funds belonging to CIBC. If the Debtors are unable to raise sufficient funds to satisfy a final insurance payment of \$306,005 that comes due on August 15, 2023, their property insurance policy is likely to lapse.⁵⁵

41. Court supervised proceedings are necessary in order to stabilize the Debtors' business and protect the value of their assets for the benefit of all stakeholders. One of the Applicant's key objectives in this court-supervised process is the implementation of a sale and investment

⁵² Stevens Affidavit, para 40.

⁵³ Stevens Affidavit, para 49.

⁵⁴ Stevens Affidavit, para 99.

⁵⁵ Stevens Affidavit, para 100.

solicitation process (a “**SISP**”) in respect of the Debtors’ business and assets as soon as practicable.⁵⁶

42. The Applicant is in the process of finalizing a stalking horse bid for substantially all of the Debtors’ assets, which it intends to submit in connection with the proposed SISP. It is a condition of the anticipated bid that the transaction be completed in the context of a *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) proceeding. The Applicant anticipates the Receiver, if appointed, would shortly file an application for an initial order in respect of the Debtors under the CCAA. In such event, the motion to seek approval of the SISP and anticipated stalking horse bid would occur in the context of that CCAA proceeding. For clarity, the Applicant is not seeking this Court’s approval of a SISP or a stalking horse bid at this time, nor does it seek any relief under the CCAA.⁵⁷

PART III - THE ISSUES

43. The issues before this Court, and addressed below, are:
- (a) Does this Court have jurisdiction to appoint the Receiver?
 - (b) Is it just and convenient in these circumstances for this Court to appoint the Receiver?
 - (c) If this Court decides to appoint the Receiver, are the terms of the Receivership Order appropriate in the circumstances of this receivership?

⁵⁶ Stevens Affidavit, para 104.

⁵⁷ Stevens Affidavit, para 106.

PART IV - THE LAW

A. This Court has jurisdiction to appoint the Receiver

44. Section 101 of the CJA provides courts with the ability to appoint a receiver where it is “just or convenient.”⁵⁸ Similarly, section 243(1) of the BIA provides that, on an application by a secured creditor, this Court may appoint a receiver to do any of the following if it considers it to be “just and convenient” to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the insolvent person’s property and business; or (c) take any other action that the Court considers advisable.⁵⁹

45. As noted, the Lease Transaction Documents provide the Applicant with a security interest in all of the assets, properties and undertakings of the Debtors, except for: (i) Validus Parent, which provided security over its shares and units in the other Debtors; and (ii) Validus Hosting, which provided security over certain assigned material project documents.⁶⁰ That specific collateral constitutes substantially all of the assets of Validus Parent and Validus Hosting.⁶¹ The Applicant is therefore a “secured creditor” within the meaning of the BIA.⁶²

46. Numerous significant defaults have occurred under the Lease Transaction Documents, as discussed above, including IFPC’s failure to pay \$9,605,000 of rent when those payments came due.⁶³ IFPC also does not have the means to satisfy the \$55,598,575 Accelerated Payment.⁶⁴ The Debtors are unable to meet their obligations as they generally become due and/or have ceased

⁵⁸ CJA, s [101](#), Schedule “B”.

⁵⁹ BIA, s [243\(1\)](#), Schedule “B”.

⁶⁰ Stevens Affidavit, para 39.

⁶¹ Stevens Affidavit, paras 20 and 30

⁶² BIA, s [2](#), Schedule “B”.

⁶³ Stevens Affidavit, para 59.

⁶⁴ Stevens Affidavit, para 99.

paying their current obligations in the ordinary course of business as they generally become due, including on account of insurance payments, various taxes, accounts payable and a myriad of other expenses.⁶⁵ Many of those missed payments were paid by the Applicant on the Debtors' behalf.⁶⁶ The Debtors are each therefore an "insolvent person" under the meaning of the BIA.⁶⁷

47. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the "locality of the debtor", which is defined in section 2 of the BIA.⁶⁸

48. Validus Parent carries on its business from, and maintains a registered office at, an address in Toronto, Ontario, and the remaining Debtors carry on their operations at power plants located in Ontario.⁶⁹ The Applicant's security is registered under the Ontario *Personal Property Security Act* and the Ontario *Land Titles Act*.⁷⁰ The locality of the Debtors is therefore Ontario, and this application is properly brought before the Ontario Superior Court of Justice (Commercial List).

49. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 243(1) of the BIA.⁷¹ KSV is a trustee as defined in the BIA, and therefore satisfies the requirements for appointment pursuant to the BIA.⁷²

⁶⁵ Stevens Affidavit, paras 85-86.

⁶⁶ *Ibid.*

⁶⁷ BIA, s [2](#), Schedule "B".

⁶⁸ BIA, s [2](#), Schedule "B"; BIA, s [243\(5\)](#), Schedule "B".

⁶⁹ Stevens Affidavit, paras 42-43; Validus Power Corp. Corporate Profile Report, Exhibit U to the Stevens Affidavit.

⁷⁰ Stevens Affidavit, paras 42-43.

⁷¹ BIA, s [2](#), Schedule "B"; BIA, s [243\(4\)](#), Schedule "B".

⁷² Stevens Affidavit, para 107.

50. Finally, section 244(1) of the BIA requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security.⁷³

51. The Applicant sent two sets of demand letters—one on June 9, 2023 demanding payment of rent in arrears and another on July 24, 2023 demanding both payment of rent in arrears and the Accelerated Payment.⁷⁴ The Applicant also sent notices of intention to enforce security under section 244(1) of the BIA on June 9, 2023.⁷⁵ The Debtors' general counsel confirmed receipt of those notices.⁷⁶ All applicable statutory notice periods have long expired.

52. The Applicant is also owed a debt that is provable in bankruptcy and is therefore entitled to seek the appointment of a receiver.

53. As a result of the foregoing, this Court has jurisdiction to appoint the Receiver pursuant to section 243 of the BIA and section 101 of the CJA.

B. It is just and convenient for this Court to appoint the Receiver

54. The Applicant submits that it has met its burden of establishing that it is just and convenient in the present circumstances for this Court to appoint the Receiver over the Debtors.

55. Neither the BIA nor the CJA provide a list of factors to be considered when determining whether it is just and convenient to appoint a receiver. Notably, the CJA does not require an applicant to be a secured creditor when determining whether the test for appointment is met.⁷⁷

The jurisprudence has developed a series of factors for a court to consider. As a guiding

⁷³ BIA, s [244\(1\)](#), Schedule “B”.

⁷⁴ Stevens Affidavit, paras 90, 96.

⁷⁵ Stevens Affidavit, para 91.

⁷⁶ Stevens Affidavit, para 92; Email from Ryan Chua dated June 10, 2023, Exhibit OO to the Stevens Affidavit.

⁷⁷ *Hands-On Capital Investments Inc. v DMCC Holdings Inc.*, [2023 ONSC 2417](#) (Commercial List), paras 48, 63.

principle, the analysis must be made having regard to all of the circumstances, including, in particular, the nature of the property and the rights and interests of all parties in relation thereto.⁷⁸

56. The factors for a court to consider include, among other things: (i) whether irreparable harm might be caused if no order were made; (ii) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place; (iii) the nature of the property; (iv) the apprehended or actual waste of the debtor's assets; (iv) the preservation and protection of the property pending judicial resolution; (v) the balance of convenience to the parties; (vi) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others; (vii) the effect of the order upon the parties; and (viii) the conduct of the parties.⁷⁹

57. In addition, where the loan agreement and related transaction documents contemplate the appointment of a court-appointed receiver, this Court affirmed in *RMB Australia Holdings Limited v. Seafleld Resources Ltd* that “the ‘extraordinary’ nature of the remedy sought is less essential to the inquiry” and instead the Court must determine “whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.”⁸⁰

58. The existence of a contractual right to appoint a receiver in the Lease Transaction Documents is key and transforms the appointment of a receiver from something that is

⁷⁸ *RMB Australia Holdings Limited v Seafleld Resources Ltd.*, [2014 ONSC 5205](#) (Commercial List), paras 28-29; *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), [40 C.B.R. \(3d\) 274](#) (Ont. Gen. Div. (Commercial List)), para 10.

⁷⁹ See, e.g., *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#), para 25.

⁸⁰ *RMB Australia Holdings Limited v Seafleld Resources Ltd.*, [2014 ONSC 5205](#) (Commercial List), paras 28-29; quoting *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), [40 C.B.R. \(3d\) 274](#) (Ont. Gen. Div. (Commercial List)), para 12; *BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc.*, [2020 ONSC 1953](#) (Commercial List), para 43.

extraordinary in nature to something that is done more as a matter of course, especially in cases in which the circumstances further support such an appointment.⁸¹ It is clear that it is in the interests of all stakeholders that the Receiver be appointed.

59. The burden is also significantly lowered in cases where the loan and security documents are in default. This Court held in *Confederation Life Insurance Co v. Double Y Holdings Inc.* that there is a major distinction between those cases where the borrower is in default and those where it is not.⁸²

60. When the above-noted factors are applied to this case, the burden to appoint a receiver has been met, and such appointment is just and convenient in the circumstances. The salient factors in this matter include: (i) the presence of multiple concerning operational and financial defaults, many of which are admitted by the Debtors; (ii) widespread and ongoing mismanagement, and a general lack of oversight, with the Debtors' business and operations; (iii) repeated efforts by the Applicant to provide accommodation and the exhausting of all other options before coming to the court; and (iv) the Applicant's contractual right to appoint a receiver. Each factor is discussed in turn.

⁸¹ Amended and Restated Lease Agreement, s 13.1(g), Exhibit C to the Stevens Affidavit; Amended and Restated Guarantee, Exhibit G to the Stevens Affidavit; Amended and Restated Limited Recourse Guarantee, Exhibit H to the Stevens Affidavit; Demand Debenture for IFPC, s 3.1(o), Exhibit I to the Stevens Affidavit; Demand Debenture for Bay Power, s 3.1(o), Exhibit J to the Stevens Affidavit; Demand Debenture for Kap Power, s 3.1(o), Exhibit K to the Stevens Affidavit; Demand Debenture for Kingston GP, s 3.1(o), Exhibit L to the Stevens Affidavit; Demand Debenture for Kingston LP, s 3.1(o), Exhibit M to the Stevens Affidavit; General Security Agreement for IFPC, s 3.1(o), Exhibit N to the Stevens Affidavit; General Security Agreement for Bay Power, s 11(q-r), Exhibit O to the Stevens Affidavit; General Security Agreement for Kap Power, s 11(q-r), Exhibit P to the Stevens Affidavit; General Security Agreement for Kingston GP, s 11(q-r), Exhibit Q to the Stevens Affidavit; Securities Pledge Agreement for Validus Power, s 13, Exhibit R to the Stevens Affidavit.

⁸² *Confederation Life Insurance Co. v Double Y Holdings Inc.*, [1991] O.J. No. 2613 (Ont. Sup. Ct. J. (Commercial List)) ([Westlaw](#)), para 20.

61. The Debtors have admitted to numerous, serious defaults. The Debtors have committed numerous serious defaults under the Lease Transaction Documents, which are continuing, including monetary defaults, reporting defaults, improper books and records, unpaid and unremitted taxes, incurrence of a large lien, breaching an agreement with a key customer and failing to maintain insurance.⁸³ The Debtors have admitted to many of these defaults and acknowledged that the Applicant is at liberty to pursue its remedies under the Lease Transaction Documents.⁸⁴

62. The Debtors' mismanagement puts the Applicant's collateral at serious risk. The Debtors have been badly mismanaging their business and operations, leading to multiple events of default and the Applicant ultimately concluding that it had no choice but to extend funds to the Debtors in order to protect, and prevent further erosion in value of, its collateral and keep the Debtors' business from deteriorating.⁸⁵

63. This mismanagement is evidenced by the troubling state of the Debtors. In addition to the Debtors' ongoing and substantial indebtedness to the Applicant, the Debtors have failed to satisfy their tax obligations on multiple fronts (including unremitted HST and potentially unremitted source deductions) and to pay amounts owing in order to maintain their insurance coverage.⁸⁶ The Debtors also face serious allegations that they did not provide benefits and RRSP contributions to their unionized employees in accordance with their collective bargaining agreement and misappropriated funds from a CIBC account.⁸⁷

⁸³ Stevens Affidavit, para 10.

⁸⁴ Stevens Affidavit, para 61; Acknowledgment and Reservation of Rights Agreement, Recital C and s 3.2, Exhibit D to the Stevens Affidavit.

⁸⁵ Stevens Affidavit, para 85.

⁸⁶ Stevens Affidavit, paras 54 and 57.

⁸⁷ Stevens Affidavit, paras 55-56.

64. In order to preserve the value of its collateral, the Applicant has also made payments to various critical counterparties, including insurers and suppliers, on behalf of the Debtors in order to prevent the Debtors' business and operations from destabilizing.⁸⁸ The Applicant has lost confidence in the Debtors' ability to manage their respective businesses, and is not prepared to advance further funds without the appointment of a receiver and manager.⁸⁹

65. Courts have regularly recognized a loss of confidence in management as grounds for appointing a receiver.⁹⁰

66. The Applicant made significant efforts to accommodate the Debtors and all options have been exhausted. The Applicant made numerous good faith attempts to engage with and accommodate the Debtors prior to the commencement of this application. As described above, the Applicant provided the Debtors with a four-month "rent holiday" and agreed to forbear from exercising its remedies under the Lease Transaction Documents during that time. The Applicant provided further funding and assistance to coordinate an out-of-court sale and marketing process, which was ultimately unsuccessful.⁹¹ Despite these significant accommodations, the Debtors continue to face numerous existential problems without a viable path forward. All out-of-court options have been tried and exhausted. The proposed receivership has therefore become necessary and would provide the Applicant—along with the Debtors other stakeholders—with both stability and an effective forum to resolve these numerous issues.

⁸⁸ Stevens Affidavit, paras 85-86.

⁸⁹ Stevens Affidavit, para 88.

⁹⁰ *Confederation Life Insurance Co. v Double Y Holdings Inc.*, [1991] O.J. No. 2613 (Ont. Sup. Ct. J. (Commercial List)) ([Westlaw](#)), paras 19-24; *BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc.*, [2020 ONSC 1953](#) (Commercial List), paras 45, 49; *KingSett Mortgage Corporation v 30 Roe Investments Corp.*, [2020 ONSC 2777](#), paras 29, 32.

⁹¹ Stevens Affidavit, para 80.

67. The Applicant has a contractual right to appoint a receiver. The GSAs, Debentures and Share Pledge Agreement (*i.e.*, the security documents that provide the Applicant with its security) all gave the Applicant the explicit contractual right to appoint a receiver over all of the assets of each of the Debtors, other than Validus Parent and Validus Hosting, when they are in default of their respective obligations.⁹² As noted, the existence of a contractual right to appoint a receiver shifts the focus of the court’s analysis from the “extraordinary” nature of a receivership to whether a receivership is in the interests of the debtor’s creditors. The factors outlined above clearly illustrate that the appointment of the Receiver over the Debtors is in the interests of the Debtors’ creditors and other stakeholders.

68. In respect of Validus Parent, the Applicant was given the contractual right to appoint a receiver only in respect of Validus Parent’s shares in the other Debtors, which the Applicant understands constitutes all or substantially all of Validus Parent’s assets.⁹³ In respect of Validus Hosting, the Applicant was granted a power of attorney over the material project documents that were assigned to the Applicant, but the Applicant is not currently aware of any material assets held by that company.⁹⁴

69. Given that Validus Parent and Validus Hosting hold minimal assets that the Applicant does not have a security interest in or that are not otherwise covered by the Applicant’s contractual right to appoint a receiver, the extension of the Receiver over Validus Parent and Validus Hosting alongside the other Debtors is not an extraordinary remedy.

⁹² *Supra* note 81.

⁹³ Stevens Affidavit, para 41; Securities Pledge Agreement for Validus Power, s 13, Exhibit R to the Stevens Affidavit.

⁹⁴ Assignment of Material Project Documents Agreement, s 10, Exhibit S to the Stevens Affidavit.

C. The terms of the proposed receivership order are appropriate

70. The terms of the Applicant's proposed receivership order are substantially similar to the terms of the Commercial List's model receivership order.⁹⁵ Each of the terms (except as noted in the next sentence) that depart from that model receivership order are typical for receiverships involving real property and are fair and reasonable in the circumstances. The only atypical addition to the proposed order is language authorizing the Receiver to apply for an initial order in respect of the Debtors and commence proceedings under the CCAA, which, as noted, the Applicant anticipates will be necessary to facilitate a sale and investment solicitation process and stalking horse bid. While the Applicant does not seek any relief under the CCAA in the within application, courts have previously granted initial CCAA orders in respect of debtor companies on the application of an interim receiver appointed over those same debtor companies.⁹⁶

PART V - ORDER REQUESTED

71. For the reasons set forth herein and in the Application Record, the Applicant respectfully requests that this Court grant the proposed receivership order in the form contained in Tab 3 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Scott Bomhof / Jeremy Opolsky
Mike Noel / Alina Butt

Lawyers for Macquarie Equipment Finance Limited,
the Applicant

⁹⁵ Blackline to Model Receivership order, Tab 4 of the Application Record.

⁹⁶ *PricewaterhouseCoopers Inc. v Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#), para 17, Appendix "B".

SCHEDULE A – LIST OF AUTHORITIES

1. *Hands-On Capital Investments Inc. v DMCC Holdings Inc.*, [2023 ONSC 2417](#) (Commercial List)
2. *RMB Australia Holdings Limited v. Seafleld Resources Ltd.*, [2014 ONSC 5205](#) (Commercial List)
3. *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), [40 C.B.R. \(3d\) 274](#) (Ont. Gen. Div. (Commercial List))
4. *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#)
5. *Confederation Life Insurance Co. v Double Y Holdings Inc.*, [1991] O.J. No. 2613 (Ont. Sup. Ct. J. (Commercial List)) ([Westlaw](#))
6. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) (Commercial List)
7. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, [2020 ONSC 2777](#)
8. *PricewaterhouseCoopers Inc. v Canada Fluorspar (NL) Inc.*, [2023 NLSC 88](#)

SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

INTERPRETATION

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

[...]

locality of a debtor means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (*localité*)

[...]

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the Civil Code of Québec or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
 - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
 - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
 - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the Civil Code of Québec entitled Prior Claims and Hypothecs that deal with the exercise of hypothecary rights; (*créancier garanti*)

PART XI – SECURED CREDITORS AND RECEIVERS

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, **receiver** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition **receiver** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court

may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

- (3) This section does not apply, or ceases to apply, in respect of a secured creditor
- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6);
or
 - (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c. C.43

INTERLOCUTORY ORDERS

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

APPENDIX “A”

Chronological Summary of Key Events

The following table provides a chronological summary of the key events that led to the Applicant’s decision to seek the appointment of a receiver in respect of the Debtors by commencing the within receivership proceedings. Events described in rows highlighted orange constitute events of default (or allegations that would constitute event of defaults if proven true) under the applicable Lending Transaction Documents. Capitalized terms used in this summary have the meanings given to them in the Stevens Affidavit.

Date	Event
April 2022	The Applicant enters into the original sale and leaseback transaction with the Debtors. Security is given by each of the Debtors, except for Kingston LP and Kingston GP and Validus Parent’s shares and units in those entities (which was given as security in February 2023).
January 2023	Hut 8 files a statement of claim against the Validus Defendants in the Hut 8 Litigation. The Applicant discovers that the Validus Defendants allegedly breached the Hut 8 PPA.
January 16, 2023	IFPC fails to make a prepayment of Base Rent and HST under the Prepayment Arrangement.
February 2023	The Applicant and the Debtors enter into the Forbearance Arrangements which provide for, among other things: <ul data-bbox="537 1465 1390 1751" style="list-style-type: none">• a four-month rent holiday;• as further security, substantially all of Kingston GP’s and Kingston LP’s real and personal property and Validus Parent’s shares and units in those entities; and• the commencement of the IFPC Marketing Process.
March 8, 2023	CRA registers liens for unpaid taxes against certain of the real property associated with the Iroquois Falls power plant.

Date	Event
April 5, 2023	The M&A Advisor commences the IFPC Marketing Process.
April – May, 2023	Upon review of the Debtors’ books and records in the IFPC Marketing Process, the Applicant discovers that the Debtors failed to adequately maintain their books and records.
March – May, 2023	<p>Upon review of the Debtors’ books and records in the IFPC Marketing Process, the Applicant discovers that certain Debtors, among other things:</p> <ul style="list-style-type: none"> • failed to remit HST to CRA (including \$5,850,000 of HST the Applicant paid to the Debtors as part of the sale and leaseback transaction); • failed to pay municipal taxes; and • possibly failed to remit source deductions to CRA.
April 11, 2023	The Validus Defendants file an amended statement of defence and counterclaim against Hut 8.
April 16, 2023	The Applicant delivers a further notice of default to the Debtors.
May 12, 2023	CIBC delivers a letter to certain Debtors alleging that Kingston GP misappropriated, and failed to return, funds that they were not entitled to access.
May 25, 2023	The Union representing IFPC’s employees delivers a grievance to IFPC and Validus Parent alleging that those Debtors failed to provide group benefit coverage and to match and/or remit RRSP contributions for those employees.
May – July, 2023	The Debtors fail to make three payments of Base Rent and HST to the Applicant that came due after the four-month rent holiday expired.

Date	Event
June 9, 2023	The Applicant delivers letters demanding payment of the Base Rent and HST in arrears and section 244 notices to each of the Debtors.
June – July 2023	The Debtors fail to pay insurance premiums that are required to maintain their property and commercial general liability insurance policies. The Applicant pays, on the Debtors' behalf, an aggregate amount of \$675,379.60 on account of those premiums to prevent the Debtors' insurance from lapsing.
July 2023	The IFPC Marketing Process unsuccessfully concludes without any viable bids in respect of IFPC.
July 21, 2023	The Applicant causes IFPC to transfer a total of \$2,012,950 of cash received from the IESO from IFPC's and Kingston LP's bank accounts and applies those amounts to the Debtors' outstanding indebtedness by way of a set-off in accordance with the Lease Transaction Documents.
July 24, 2023	The Applicant delivers further letters demanding payment of: <ul style="list-style-type: none"><li data-bbox="532 1178 1068 1213">• the Base Rent and HST in arrears; and<li data-bbox="532 1255 919 1291">• the Accelerated Payments.
July 31, 2023	The Applicant commences the within receivership proceedings.

APPENDIX “B”

PricewaterhouseCoopers Inc. v Canada Fluorspar (NL) Inc., 2022 NLSC 48

See attached.



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION
In Bankruptcy and Insolvency**

Citation: *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, 2022
NLSC 48

Date: March 24, 2022

Docket: 202201G0709

IN THE MATTER OF an application
of Canada Fluorspar (NL) Inc. and
Canada Fluorspar Inc., by their Court-
Appointed Interim Receiver, Grant
Thornton Limited

AND IN THE MATTER OF the
*Companies' Creditors Arrangement
Act*, R.S.C. 1985, c. 36, as amended

BETWEEN:

**PRICEWATERHOUSECOOPERS INC.,
IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER AND
MANAGER OF BRIDGING FINANCE
INC. AND BRIDGING INCOME FUND
LP**

APPLICANT

AND:

**CANADA FLUORSPAR (NL) INC. AND
CANADA FLUORSPAR INC.**

RESPONDENTS

**Before: Justice Alexander MacDonald
Edited Transcript of Oral Reasons for Judgment**

Filed *Mar 24/22 GA*

Q

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: March 11, 2022

Date of Oral Judgment: March 11, 2022

Appearances:

Geoffrey L. Spencer,
Meghan M. King
and Phil Clarke

Appearing on behalf of the Applicant,
Grant Thornton Limited, Court-Appointed
Interim Receiver of Canada Fluorspar
(NL) Inc. and Canada Fluorspar Inc.

Darren D. O'Keefe and
Allison J. Philpott

Appearing on behalf of Canada Fluorspar
(NL) Inc. and Canada Fluorspar Inc.

Joseph J. Thorne,
Meaghan E. McCaw and
Graham Page

Appearing on behalf of
PricewaterhouseCoopers Inc., on behalf of
Bridging Finance Inc.

Robert J. Kennedy and
Geoffrey W.P. Davis-
Abraham

Appearing on behalf of HSBC Bank
Canada

James Foran

Appearing on behalf of Deloitte
Restructuring Inc., financial advisor for
HSBC Bank Canada

David G. Rogers and
Julia Tomson

Appearing on behalf of Her Majesty in
Right of Newfoundland and Labrador



Maeve A. Baird

Appearing on behalf of the Canada
Revenue Agency

Andrew Harmes

Appearing on behalf of Golden Gate
Capital

Sean M. Pittman

Appearing on behalf of M. Rock Inc.,
Atlantic Explosives Limited and Lorne
Tide Controls Limited

Authorities Cited:

CASES CONSIDERED: *Lydian International Limited (Re)*, 2019 ONSC
7473

STATUTES CONSIDERED: *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36

REASONS FOR JUDGMENT

MACDONALD J.

INTRODUCTION

[1] Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., by their court-appointed interim receiver (“Receiver”), Grant Thornton Limited (“GTL”), and on behalf of Newspar, a general partnership (collectively, the “Companies”), apply for creditor protection and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“*CCAA*”). They seek an initial order substantially in the form attached to the application record. No party on the motion opposed the request.

[2] For the reasons that follow, I grant the Initial Order described in Schedule “A” attached to this decision.



FACTS

[3] The Companies operate or support operations of a fluorspar mine and related facilities, including a mill facility and marine terminal, all near St. Lawrence, NL. In early February 2022, they employed about 280 people, most of whom are in Newfoundland and Labrador. Golden Gate Capital now wholly owns Canada Fluorspar Inc., which wholly owns Canada Fluorspar (NL) Inc., which owns 99.999% of Newspar.

[4] The economics of the facility require the Companies' operations to operate at near full capacity to produce enough fluorspar to recover the costs associated with production.

[5] The Companies' December 31, 2020 consolidated financial statements show the Companies have net book value assets of about \$411 million and net book value liabilities of about \$286 million. The Companies then had about \$301,000 in available cash, a working capital deficit of about \$82 million, and cumulative retained earnings deficit of about \$39 million.

[6] The Companies lost about \$29 million in 2020 and \$44 million (preliminary) in 2021. The Companies experienced liquidity challenges caused in part by logistical and COVID-19 related issues that adversely affected production at their facilities.

[7] Mr. Phil Clarke, of GTL, the court-appointed interim receiver of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc., says that a combination of shareholders' equity, secured creditors, capital lessors, and unsecured creditors financed the Companies' operations.



[8] Golden Gate Capital has invested approximately USD 238 million in equity financing since it acquired the Companies in 2014, including covering operating losses, but it refused to continue to provide additional financial support in February 2022. This refusal triggered the liquidity crisis, which in turn resulted in the Interim Receivership Order described later.

[9] As of March 4, 2022, the Companies have about \$95 million in secured debt, about \$10 million in capital leases, and about \$23 million in unsecured debt. The secured creditors include Bridging Finance Inc. (“Bridging”), the Government of Newfoundland and Labrador (“GNL”), and HSBC Bank Canada (“HSBC”).

[10] When Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. asked for the court-appointed receiver, they had approximately \$1.8 million in cash and owed \$800,000 to employees. On February 21, 2022, as a result of these financial difficulties, the Court:

- (a) appointed GTL as interim receiver of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc.;
- (b) ordered a stay of proceedings against Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. or their property without the written consent of the interim receiver or leave of the Court;
- (c) ordered that the interim receiver’s and its counsel’s reasonable fees not exceed \$250,000 and be a priority charge on their property;
- (d) ordered that Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. are authorized borrow up to \$2 million to finance operations, also secured by a priority charge on the Companies’ property (Interim Receiver Borrowing); and



- (e) ordered that the interim receiver could commence *CCAA* proceedings for Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc.

(Interim Receivership Order)

[11] The Interim Receivership Order did not affect HSBC's security interest in specified receivables.

[12] The Companies' cash flow statements filed show that during the week of February 21, 2022, Bridging lent the Companies about \$1,809,000 as part of the Interim Receiver Borrowing.

[13] The Companies took this motion and now say they require immediate protection under the *CCAA* for breathing room to pursue restructuring options. They intend to continue discussions with their lenders and other stakeholders. They intend to continue to evaluate financing or sale options with a view to achieving a viable path forward.

[14] The draft Initial Order also does not affect HSBC's security interest in specified certain receivables. The parties dispute whether HSBC has a security interest over approximately \$2.5 million in inventory at the Companies' facilities. This issue will not be resolved today.

ISSUES

[15] The Companies say time is of the essence given its minimal cash flow position and negative cash flows. The issues are:

- (a) Do the Companies meet the criteria for protection of the *CCAA*?

d

- (b) Should GTL be appointed the Monitor?

- (c) Should the Court exercise its discretion to:
 - i. order the “Enhancement of the Monitor’s Powers” referred to in the draft Initial Order?

 - ii. grant the Administration Charge? and

 - iii. authorize borrowings under the DIP Financing Agreement secured by a priority charge?

ANALYSIS

Do the Companies Meet the Criteria for Protection under the CCAA?

[16] I have considered the affidavit of the proposed Monitor, Phil Clarke, on the financial condition of the Companies. I find it is appropriate to grant an order under section 11.02 and in particular I find that:

- (a) the Companies meet the *CCAA* definition of a company and are eligible for *CCAA* protection;

- (b) the Companies are debtor companies under the *CCAA*. Mr. Clarke told me that all three companies are insolvent and each have liabilities in excess of \$5 million. He referred me to the Companies’ consolidated financial statements to support his statement; and



- (c) the Companies are eligible for *CCAA* protection.

Should GTL be appointed the Monitor?

[17] I will appoint GTL as Monitor and do so for the following reasons:

- (a) GTL is qualified to act as Monitor under Section 11.7(1) of the *CCAA*;
- (b) GTL is already Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc.'s interim receiver pursuant to the Interim Receivership Order. That order remains in effect until at least 30 days after February 21, 2022;
- (c) Paragraph 6(o) of the Interim Receivership Order specially allowed GTL to commence proceedings under the *CCAA*. Paragraph 36 provides that the Interim Receivership Order does not prevent GTL from acting as Monitor;
- (d) Many of the activities provided for in the Initial Order are also contained in the Interim Receivership Order. Indeed the interim receiver's costs are already secured under that order; and
- (e) It serves all of the stakeholders to avoid duplication of effort. GTL is already responsible for many of the activities provided for in the Initial Order.

ON

Should the Court exercise its discretion to provide for the “Enhancement of the Monitor’s Power” referred to in the draft Initial Order?

[18] Pursuant to section 11.02(1) of the *CCAA*, a court may make an order staying all proceedings in respect of the Companies for a period not more than 10 days, provided that the court is satisfied that circumstances exist to make the order appropriate.

[19] Section 11.001 of the *CCAA* provides:

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is *reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.*

[Emphasis added.]

[20] The Parliament of Canada enacted these provisions in 2019. Justice Morawetz in *Lydian International Limited (Re)*, 2019 ONSC 7473, referred to a News Release issued by Innovation Science and Economic Development Canada, which specifically states that these amendments “limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players” (paragraph 25).

[21] I agree with Justice Morawetz’s observations, at paragraph 26, that the intent of section 11.001 is clear. Absent exceptional circumstances, the relief I grant in an initial hearing shall be limited to relief that is reasonably necessary for the continued operations of the debtor Companies in the ordinary course of business during that period. The period being no more than 10 days, and wherever possible, the *status quo* should be maintained during this period.

[22] Some of the enhanced powers relate to the Monitor's ability to facilitate restructuring, including the power to proceed with an orderly restructuring or liquidation of the business. This goes beyond the *status quo*; it is more appropriate that I deal with these parts of the enhanced Monitor's powers at the comeback hearing and in the Amended and Restated Initial Order.

[23] I will order some of the enhanced powers that are not directly related to restructuring or liquidation of the business. The Monitor persuaded me that he needs these to complete his duties.

[24] This is not to say the Monitor will be idle without all of the enhanced powers. Justice Morawetz observed in paragraph 27 of his decision that many things can happen after the Initial Order, including:

- (a) notifying all stakeholders of the *CCAA* application;
- (b) stabilizing the operation of the Companies;
- (c) negotiating with key stakeholders who were consulted prior to the *CCAA* filing; and
- (d) starting negotiations with stakeholders who were not consulted prior to the *CCAA* filing.

Should the Court exercise its Discretion to Grant the Administration Charge?

[25] The Companies seek, pursuant to section 11.52(1), a charge on the Companies' property to a maximum amount of \$250,000 to secure the Monitor's costs, and his and the Companies' costs for legal, financial and other experts. For

the reasons I will discuss, I will allow an administration charge of \$250,000, but this amount will include the amount provided for in paragraph 24 of the Interim Receivership Order so that the total charge will be \$250,000.

[26] I must limit this administration charge to that which is reasonably necessary for the continued operation of the Companies during the initial 10-day stay.

[27] The Companies' cash flow statements show that administration costs will be more than \$300,000 up to the issuance of the Initial Order, and something less than \$150,000 in the two weeks after. The costs on a weekly basis are \$75,000. The Monitor must take on additional duties because senior management and the directors of the Companies have resigned. The proposed Monitor says that he needs these funds. I find that the \$250,000 is a fair and reasonable allowance for these costs.

[28] I have also considered:

- (a) This is a mine with a number of ancillary operations. The *CCAA* process will last for months and perhaps longer;
- (b) Even though I have not allowed for all of the Monitor's enhanced powers in the Initial Order, the Monitor will have more responsibility because the entire management team and board of directors have resigned; and
- (c) There is no avoidable duplication of roles.



Should the Court exercise its Discretion to Authorize Borrowings under the DIP Financing Agreement secured by a Priority Charge?

[29] The Companies ask that I allow the Monitor to execute the DIP Financing Agreement on its behalf. GNL and Bridging have or will provide an interim loan facility of up to \$3.6 million (“DIP”) and secure it by a priority charge of the Companies’ property. For the reasons I will describe, I will make provision for DIP of up to \$1.8 million in the Initial Order.

[30] The Interim Receivership Order allowed the Interim Receiver to borrow up to \$2 million in interim financing. The Court secured this borrowing by a priority charge on the Companies’ property. The cash flow statement shows that the Companies borrowed \$1.809 million from Bridging during the week of February 22, 2022. The parties confirmed that it advanced this loan under the same terms in the proposed DIP Facility Loan Agreement.

[31] Under section 11.2(1) of the *CCAA*, I may make an order to allow the DIP Facility Loan Agreement and secure it by a priority charge, but the charge may not secure an obligation that exists before I make the order. Therefore, I may not order in this *CCAA* proceeding that Bridging has such a priority charge for its advance. I am prepared to include bridging language to the effect that the Court authorized the bridging loan in the Interim Receivership Order. The parties may make further representations on this issue at the comeback hearing.

[32] The Companies project that the GNL will advance about \$1.809 million shortly after I grant this Initial Order. I am satisfied that this financing is necessary to allow the Monitor to perform his duties. I have also considered:

- (a) that the *CCAA* process is a complex proceeding and the cash flow statements show the Monitor’s expenses will extend for months;

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- (b) that the Monitor will likely have enhanced powers in the ultimate order (issued after the comeback hearing) because the entire management team and board of directors have resigned, therefore placing a larger burden on the Monitor;
- (c) that the Monitor told me that without the DIP advance of \$1.8 million, the Companies could be bankrupt. The Companies' cash flow statements support this possibility. The loan provides the means to allow for the development of a possible compromise proposal; and
- (d) that this is a complex mining operation. The costs associated with maintaining and protecting the facility are significant. Furthermore, it is likely that the Monitor will attempt to sell the facility as an operating mine; and
- (e) that all secured creditors consent to this charge.

DISPOSITION

[33] I grant the Initial Order described in Schedule "A". I hereby set the comeback hearing for March 18, 2022 at 10:00 a.m.



ALEXANDER MACDONALD
Justice

Schedule "A"

2022 01G 0709

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Canada Fluorspar (NL) Inc., and Canada Fluorspar Inc., by their Court Appointed Interim Receiver, Grant Thornton Limited.

AND IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36, as amended

INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE MACDONALD

THIS APPLICATION, made by Grant Thornton Limited, in its capacity as Court-Appointed Interim Receiver of Canada Fluorspar (NL) Inc., and Canada Fluorspar Inc., (the "Interim Receiver" or the "Applicant") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") for an Order substantially in the form filed with the Application was heard this 11th day of March, 2022.

ON READING the affidavit of Phil Clarke sworn the 8th day of March, 2022 (the "Clarke Affidavit") and the Exhibits thereto, the consent of Grant Thornton Limited ("GTL") to act as Court-appointed monitor of Canada Fluorspar (NL) Inc. Canada Fluorspar Inc., and Newspar (a General Partnership) (in such capacity, the "Monitor"), and the Pre-Filing Report of GTL as Interim Receiver;

ON HEARING the submissions of counsel for the Applicant, legal counsel for the Company (as defined herein), and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated the 10th day of March, 2022, and on reading the consent of GTL to act as Monitor;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Canada Fluorspar (NL) Inc., Canada Fluorspar Inc., and Newspar (a General Partnership) (collectively the "**Company**") is a company to which the CCAA applies.
3. Capital terms not otherwise defined herein shall have the meaning ascribed to them in Schedule "A"

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Company shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, save and except the Excluded Property (the "**Property**"). Subject to further Order of this Honourable Court, the Monitor on behalf of the Company, shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Monitor is authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the fees and disbursements of any Assistants retained or employed by the Company in respect of these proceedings, at their standard rates and charges; and



- (c) in consultation with the DIP Lender, amounts owing for goods and services supplied to the Company, if in the opinion of the Monitor, the supplier or vendor of such goods or services is necessary for the operation and preservation of the Business or Property.
6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Monitor, on behalf of the Company, shall be entitled but not required to pay all reasonable expenses incurred by the Company in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services and lease payments for mining equipment used in the operation of the Business; and
 - (b) payment for goods or services actually supplied to the Company following the date of this Order.
7. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Company in connection with the sale of goods and services by the Company, but only where such Sales Taxes are accrued or collected after the date of this Order, and
 - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of



municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Company.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Monitor, on behalf of the Company, shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Company and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order. The Monitor, on behalf of the Company, may pay such Rent twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.
9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Monitor, on behalf of the Company, is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Company to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

10. **THIS COURT ORDERS** for ten (10) days from the date of this order or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Company or the Monitor, or affecting the Business or the Property, (save and except the Excluded Property), except with the written consent of the Monitor and the Company, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Company or affecting the Business or the Property (save and except the Excluded Property) are hereby stayed and suspended pending further Order of this Court.

Or

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Company or the Monitor, or affecting the Business or the Property, (save and except the Excluded Property), are hereby stayed and suspended except with the written consent of the Monitor and the Company, or leave of this Court, provided that nothing in this Order shall (i) empower the Monitor, on behalf of the Company, to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.
12. **THIS COURT ORDERS** that nothing in this Order shall prevent HSBC from exercising any rights or remedies, taking any enforcement steps, actions or commencing any proceedings against the Company with respect to the Excluded Property.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, except with the written consent of the Monitor and the Company, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Company, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, and that the Monitor, on behalf of the Company, shall be entitled to the



continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Monitor, on behalf of the Company, in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and each of the Monitor and the Company, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Company. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

16. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Company with the powers and obligations set out in the CCAA, (save and except in relation to the Excluded Property) or set forth herein and that the Company and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Company pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
17. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
 - (a) monitor the Company's receipts and disbursements;

- (b) report to this Court at such times and intervals as the Monitor or Court may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist, with consultation with the Company, in its dissemination of reports and other information to the DIP Lender (as defined herein) and their respective counsel, pursuant to and in accordance with the Definitive Documents (as defined herein), or as may otherwise be reasonably requested by the DIP Lender;
- (d) execute the DIP Financing Agreement (as defined herein) on behalf of the Company;
- (e) advise, in consultation with the Company, in its preparation of the Company's cash flow statements and reporting required by the DIP Lender under the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Lender and their respective counsel in accordance with the Definitive Documents;
- (f) execute any and all documentation, on behalf of the Company, as reasonably necessary or required by the DIP Financing Agreement;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Company, to the extent that is necessary to adequately assess the Company's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including those conferred by this Order;
- (j) enter into any agreements in the ordinary course of business;



- (k) exercise any rights of the Company;
 - (l) apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of the Company;
 - (m) take any and all steps of the Company authorized by any Order made in these proceedings, including making distributions or payments;
 - (n) purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the Business, or any part or parts thereof, in the ordinary course of business; and
 - (o) perform such other duties as are required by this Order or by this Court from time to time.
18. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property but as Monitor shall take part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business, or any part thereof.
19. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.



20. **THIS COURT ORDERS** that nothing herein contained shall make the Monitor liable for any mine closure or environmental and land rehabilitation-related liabilities or obligations in respect of or in any way related to the Property (or caused by or resulting from any matter or thing originating on or coming from the Property). For greater certainty:
- (a) Notwithstanding anything in any Environmental Legislation, the Monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Monitor's appointment; or
 - (ii) after the Monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the Monitor's gross negligence or wilful misconduct.
 - (b) Nothing in sub-paragraph (a) exempts the Monitor from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
 - (c) Notwithstanding anything in any Environmental Legislation, but subject to subparagraph (a) hereof, where an order is made which has the effect of requiring the Monitor to remedy any environmental condition or environmental damage affecting the Property, the Monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, or during the period of the stay referred to in clause (ii) below, the Monitor:
 - (A) complies with the order, or
 - (B) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;



- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed, by,
 - (A) the court or body having jurisdiction under the law pursuant to which the order was made to enable the Monitor to contest the order; or
 - (B) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Monitor had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.
- 21. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Company and the DIP Lender with information provided by the Company in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Company is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Company may agree.
- 22. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
- 23. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Monitor,

counsel for the Monitor, and counsel for the Company on a weekly basis and, in addition, the Company is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Company reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

24. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.
25. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, (save and except the Excluded Property and Excluded Inventory), which charge shall not exceed an aggregate amount of \$250,000.00, as security for their professional fees and disbursements incurred at their respective standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 herein.

ENHANCEMENT OF MONITOR'S POWERS

26. **THIS COURT ORDERS** that, without in any way limiting the powers and duties of the Monitor, the Monitor is hereby empowered and authorized, but not obligated, to do any of the following in the name and on behalf of the Company, where the Monitor considers it necessary or desirable:
 - (a) (take any and all actions and steps to manage, operate and carry on the Business, including, without in any way limiting the generality of the foregoing:
 - (i) temporarily ceasing, downsizing or shutting down any of the Company's operations;
 - (ii) terminating the employment of or temporarily laying off employees of the Company;
 - (iii) taking any and all corporate governance actions for the Company; and



- (iv) providing instruction and direction to the advisors of the Company;
- (b) preserve, protect and exercise control over the Property, (with the exception of the Excluded Property), or any parts thereof, including, without in any way limiting the generality of the foregoing:
 - (i) receive, collect and exercise control over all monies and accounts held by or owing to the Company; including any proceeds of the sale of any of the Property (save and except the Excluded Property);
 - (ii) exercise all remedies of the Company in collecting monies owed or hereafter owing to the Company and to enforce any security held by the Company;
 - (iii) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property (save and except the Excluded Property) for any purpose pursuant to this Order;
- (c) to report to, meet with and discuss with such affected persons as the Monitor deems appropriate on all matters relating to the Business and the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (d) oversee and direct the preparation and dissemination of financial and other information of the Company in these proceedings, including cash flow statements;
- (e) apply to the court for advice and direction or for any further orders in these proceedings, including, without in any way limiting the generality of the foregoing, sale approval and vesting orders and orders extending or terminating the stay of proceedings;
- (f) perform such other duties or take any steps reasonably incidental to the exercise of these powers;



and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Company and without interference from any other person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

27. **THIS COURT ORDERS** that the Company and all its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf shall fully co-operate with the Monitor in the exercise its powers under this Order or any other Order of the Court, including by:
- (a) advising the Monitor of the existence of any Property of which such party has knowledge of;
 - (b) providing the Monitor with immediate and continued access to any Property in such party's possession or control;
 - (c) advising the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Records**") of which such party has knowledge of; and
 - (d) providing access to and use of the Records, including any accounting, computer, software and physical facilities relating thereto, and including providing the Monitor with instructions on the use of any computer or other system as requested by the Monitor and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the Records, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

2

LIMITATION ON THE MONITOR'S LIABILITY

28. **THIS COURT ORDERS THAT** the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the Company.
29. **THIS COURT ORDERS THAT** the Monitor is not and shall not for the purposes of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) be deemed to be a legal representative or person to whom s. 150(3) of that Act applies.
30. **THIS COURT ORDERS THAT** that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, any other applicable legislation, and any other Order granted in these proceedings, all shall apply and extend to the Monitor in connection with the Monitor carrying out the provisions of this Order, amended as necessary to give effect to the terms of this Order.

DIP FINANCING

31. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, is hereby authorized and empowered to execute, enter into and deliver the DIP Facility Loan Agreement (the "**DIP Financing Agreement**") dated the ___ day of March, 2022 between, the Company, as borrower, and Bridging Finance Inc., Bridging Income Fund LP, Bridging Private Debt Institutional LP, Bridging Mid-Market Debt Fund LP, Bridging Private Debt Lending Master Fund I, LP (Cayman), Bridging SMA 1 LP, Bridging SMA 2 LP, and Her Majesty in Right of Newfoundland and Labrador, as represented by the Minister of Industry, Energy and Technology as lender (collectively the "**DIP Lender**"), and to borrow, in accordance with the terms and conditions of the DIP Financing Agreement, interim financing of up to One Million Eight Hundred Thousand (\$1,800,000.00) (the "**DIP Facility**") to, among other things, fund the Company's working capital requirements and other general corporate purposes of the Company during the ten (10) day Stay Period.
32. **THIS COURT ORDERS** that, in addition to the DIP Financing Agreement, the Company is also hereby authorized and empowered to execute and deliver such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and



other definitive documents (collectively with the DIP Financing Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Financing Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Monitor, on behalf of the Company is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Financing Agreement and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. **THIS COURT ORDERS** that, as security for the Company's obligations under the Definitive Documents, the DIP Lender shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lender's Charge**") on the Property, (save and except the Excluded Property and Excluded Inventory), which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 herein. Notwithstanding the foregoing, the Interim Receiver's Borrowing Charge contained in Paragraph 27 of the Interim Receivership Order shall continue to be in full force and effect during the term of this Order. The Interim Receiver's Borrowing Charge shall rank *pari passu* with the DIP Lender's Charge.
34. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge, upon five (5) days notice to the Monitor and the Company, the DIP Lender may exercise any rights and remedies against the Company or the Property, (save and except the Excluded Property), under or pursuant to the DIP Financing Agreement, the other Definitive Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to the Company and set off and/or consolidate any amounts that may be owing by the DIP Lender against the obligations of the



Company to the DIP Lender under the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property (save and except the Excluded Property).

35. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Company under the CCAA, or any proposal filed by the Company under the BIA, with respect to any advances made under the DIP Financing Agreement and the other Definitive Documents.

36. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Financing Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the DIP Financing Agreement or the other Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the DIP Financing Agreement and the other Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Interim Receiver's Borrowing Charge on the Property (save and except



the Excluded Property and Excluded Inventory), (collectively, the "Charges"), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of \$250,000.00);

Second– the DIP Lender's Charge and the Interim Receiver's Borrowing Charge, on a pari passu basis.

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
39. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property, (save and except the Excluded Property and Excluded Inventory), and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any secured creditor of the Company who did not receive notice of the application for this Order. The Company shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.
40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges, unless the Company also obtains the prior written consent of the Monitor and of the applicable chargee(s) entitled to the benefit of the Charges (collectively, the "Chargees"), or further Order of this Court.
41. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any



bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) Neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Financing Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Financing Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (c) The payments made by the Company pursuant to this Order, the DIP Financing Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Company's interest in such real property leases.

SERVICE AND NOTICE

43. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner by electronic means, a notice to every known creditor who has a claim against the Company of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed



manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

GENERAL

44. **THIS COURT ORDERS** that the Monitor, on behalf of the Company, may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
45. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Company, the Business or the Property.
46. **THIS COURT ORDERS** that each of the Company and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
47. **THIS COURT ORDERS** that a hearing for the balance of the relief sought by the Monitor, on behalf of Company in the Notice of Motion is hereby scheduled before this Court for the 18th day of March 2022 at 10:00 am or such other date as determined by this Court.



Schedule "A"

Defined Terms

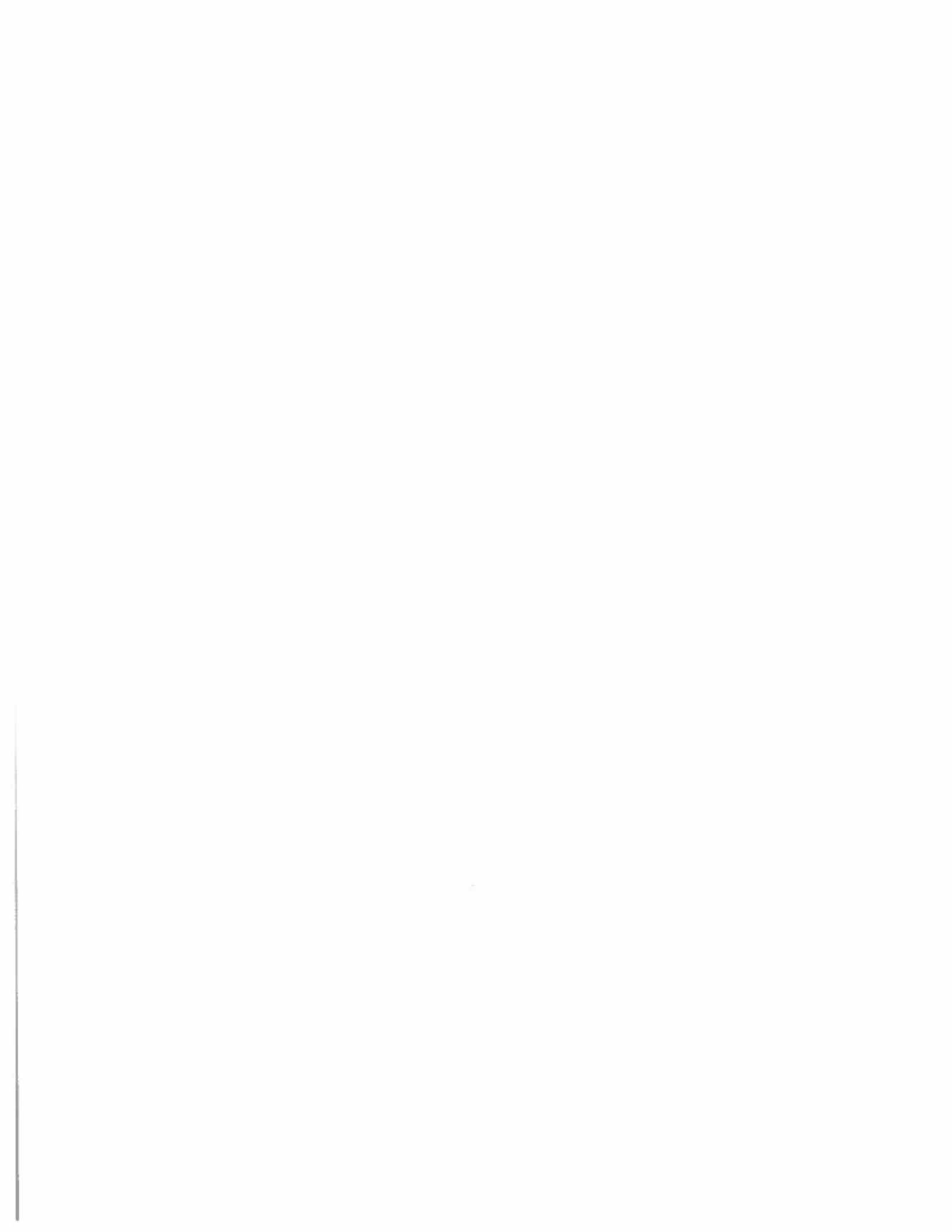
"Excluded Inventory" means inventory representing a value in the amount of USD2,500,000

"Excluded Property" means: (i) any and all Receivables and/or Financed Receivables, as such terms are defined pursuant to the RFA, together with all rights and remedies arising thereunder, insurance policies and proceeds resulting therefrom, and proceeds generally, and (ii) all Export Development Canada insurance policies or support in favor of HSBC,

"HSBC" means HSBC Bank Canada; and

"RFA" means the Trade Invoice Recourse Financing Facility Agreement between HSBC and Canada Fluorspar (NL) Inc., dated May 25, 2018, as amended.





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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANT
(Receivership Order)**

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