

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**MOTION RECORD  
(Returnable January 7, 2022)**

January 6, 2022

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver

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**ONTARIO  
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*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
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**B E T W E E N:**

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Respondents

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<b>2</b>	Affidavit of Adam Driedger dated January 6, 2022
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<b>B</b>	Approval and Vesting Order of Justice Conway dated November 12, 2021
<b>C</b>	Receiver's Undertaking Re: Post-Closing Items dated December 6, 2021
<b>3</b>	Draft Order re: Name Change

**TAB 1**

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

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC., 2242462  
ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

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

**NOTICE OF MOTION  
(Motion Returnable January 7, 2022 at 12:30 p.m.)**

BDO Canada Limited (“**BDO**”), in its capacity as receiver and manager, without security, of all of the assets, undertakings, and properties (collectively, the “**Property**”) of each of the Respondents (in such capacity, the “**Receiver**”), will make a motion to the Honourable Justice McEwen on Friday, January 7, 2022, at 12:30 p.m. (Eastern Time), or as soon after that time as the motion can be heard, by Zoom videoconference due to the COVID-19 pandemic.

**PROPOSED METHOD OF HEARING:**

This motion is to be heard via Zoom videoconference, the details of which are attached at Schedule “A” hereto.

**THIS MOTION IS FOR:**

1. An order (the “**Name Change Order**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) and the *Courts of Justice Act*, R.S.O 1990 c. C-43, as amended (the “**CJA**”), substantially in the form attached at Tab 3 of the motion record of the Receiver, authorizing and directing the Receiver to execute and file articles of reorganization pursuant to section 186 of the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the “**OBCA**”) or such other documents as may be required to change the legal name of the Respondent, Nimbus Water Systems Inc. (“**Nimbus Water**”).
2. Such other relief as this Honourable Court deems necessary.

**THE GROUNDS FOR THIS MOTION ARE:**

***Background***

3. The Respondents are a Canadian privately owned and operated group of companies located in North York, Ontario, that provide sales, installation and service of water treatment systems for residential, commercial and industrial clients across Canada.
4. As a result of the Bank’s concerns with respect to the financial position of the Respondents and the deterioration of the Bank’s security position, the Bank brought an application under section 243(1) of the BIA and section 101 of the CJA pursuant to which BDO was appointed by order of Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated August 23, 2021 (the “**Receivership Order**”) as Receiver of the Property of each of the Respondents.
5. By order of Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 13, 2021, the Court approved the Stalking Horse Asset

Purchase Agreement between the Receiver and 2752837 Ontario Inc. (the “**Purchaser**”) dated September 6, 2021 (the “**Stalking Horse APA**”) pursuant to which the Purchaser agreed to purchase substantially all of the Property of the Respondents.

6. As a result of the Receiver’s sale and investment solicitation process (the “**SISP**”) (for which the Stalking Horse APA effectively set the “base line”), the Stalking Horse APA was determined to be the Successful Bid (as defined in the SISP).
7. By order of Justice Conway dated November 12, 2021, the Court vested all of the Nimbus Group’s right, title, and interest in and to the Purchased Assets (as defined and described in the Stalking Horse APA) in two nominee corporations of the Purchaser.
8. The transaction contemplated pursuant to the Stalking Horse APA closed in accordance with its terms on December 6, 2021.
9. Pursuant to the Stalking Horse APA:
  - (a) the Purchaser acquired, among other things, all of the goodwill associated with the name “Nimbus Water Systems”; and
  - (b) if requested by the Purchaser, on or promptly following the Closing Date, the Receiver shall discontinue the use of the name “Nimbus Water Systems” and any variation thereof and shall, subject to the Court’s approval, as soon as reasonably practicable file articles of amendment to change the corporate name of Nimbus Water to another name not confusingly similar to its present name.

10. The Purchaser has requested that the Receiver discontinue the use of the name “Nimbus Water Systems” and change the corporate name of Nimbus Water to another name not confusingly similar to its present name.
11. Pursuant to the Receiver’s Undertaking Re: Post-Closing Items dated December 6, 2021 delivered in connection with the closing of the transaction contemplated by the Stalking Horse APA (the “**Undertaking**”):
  - (a) the Receiver agreed to obtain and deliver to the Purchaser, as soon as reasonably possible following the closing date, and prior to the filing for bankruptcy for any of the Nimbus Group entities, an endorsed Court order authorizing a corporate name change for Nimbus Water; and
  - (b) the Receiver agreed to deliver to the Purchaser, within three business days of obtaining such order, and prior to filing for bankruptcy for any of the Nimbus Group entities, articles of reorganization to change the corporate name for Nimbus Water and to provide a copy of the accepted articles once received.
12. Pursuant to section 186 of the OBCA, under which Nimbus Water was incorporated, if a corporation is subject to a “reorganization” (including pursuant to the BIA), its articles may be amended by an order to effect any change that might lawfully be made by an amendment under section 168.
13. The Receiver requires the Name Change Order to effect the name change required pursuant to the Stalking Horse APA and the Undertaking. No stakeholders of the Respondents will be prejudiced as a result of the Name Change Order.



***Other Grounds for Relief:***

14. The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C-43, as amended, and the inherent and equitable jurisdiction of this Honourable Court;
15. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37, 38, 39 of the *Rules of Civil Procedure* (Ontario), R.R.O. 1990, Reg. 194.; and
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Adam Driedger sworn January 6, 2022; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

January 6, 2022

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams** (LSO# 41877E)  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver

**Schedule “A”  
Zoom Details**

Join Zoom Meeting

<https://tgf-ca.zoom.us/j/84008511008>

Meeting ID: 840 0851 1008

Participant one tap mobile

+16473744685,,84008511008#,# Canada (Toronto)

Host one tap mobile

+16473744685,,84008511008# Canada (Toronto)

Dial by your location

- +1 587 328 1099 Canada (Calgary)
- +1 613 209 3054 Canada (Ottawa)
- +1 647 374 4685 Canada (Toronto)
- +1 778 907 2071 Canada (Vancouver)
- +1 204 272 7920 Canada (Winnipeg)
- +1 438 809 7799 Canada (Montreal)
- +1 646 518 9805 US (New York)
- +1 786 635 1003 US (Miami)
- +1 206 337 9723 US (Seattle)
- +1 213 338 8477 US (Los Angeles)
- +1 267 831 0333 US (Philadelphia)
- +1 312 626 6799 US (Chicago)

Meeting ID: 840 0851 1008

Find your local number: <https://tgf-ca.zoom.us/j/84008511008>

**SERVICE LIST**  
(as at December 8, 2021)

<b>TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Fax: (416) 304-1313</p> <p><b>Leanne M. Williams</b> Email: <a href="mailto:lwilliams@tgf.ca">lwilliams@tgf.ca</a> Tel: (416) 304-0060</p> <p><b>Adam Driedger</b> Email: <a href="mailto:adriedger@tgf.ca">adriedger@tgf.ca</a> Tel.: (416) 304-1152</p> <p>Lawyers for the Court-appointed Receiver</p>
<b>AND TO:</b>	<p><b>CAPO SGRO LLP</b> 7050 West Road, Suite 400 Woodbridge, ON L4L 8G7</p> <p><b>Erica D. Cappello</b> Tel:(905) 850-7000 Fax: (905) 850-7050 Email: <a href="mailto:ecappello@cslp.ca">ecappello@cslp.ca</a></p> <p>Lawyers for the Respondents and Panagioti (Peter) Bozzo</p>
<b>AND TO:</b>	<p><b>GILMOUR BARRISTERS PROFESSIONAL CORPORATION</b> 1 Royce Avenue, #3 Brampton ON Fax: (905) 866-5177</p> <p><b>William R. Gilmour</b> Email: <a href="mailto:bill@wgilmour.ca">bill@wgilmour.ca</a> Tel: (905) 451-6682</p> <p>Lawyers for the Respondents and for Peter Bozzo</p>

<b>AND TO:</b>	<p><b>BDO CANADA LIMITED</b> 20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5 Fax: (416) 865-0904</p> <p><b>Josie Parisi</b> Tel: (416) 865-0210 Email: <a href="mailto:jparisi@bdo.ca">jparisi@bdo.ca</a></p> <p><b>Matthew Marchand</b> Tel: (416) 865-0111 Email: <a href="mailto:mmarchand@bdo.ca">mmarchand@bdo.ca</a></p> <p>Court-appointed Receiver</p>
<b>AND TO:</b>	<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> Tel: (416) 218-1129 Email: <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a></p> <p><b>Sanea Tanvir</b> Tel: (416) 218-1128 Email: <a href="mailto:stanvir@chaitons.com">stanvir@chaitons.com</a></p> <p>Lawyers for JLHD Investments Inc. (PPSA registrant)</p>

<b>AND TO:</b>	<p><b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p><b>Elaine Gray</b> Tel: (416) 863-4775 Email: <a href="mailto:elaine.gray@dentons.com">elaine.gray@dentons.com</a></p> <p><b>Mark A. Freake</b> Tel: (416) 863-4456 Fax: (416) 863-4592 Email: <a href="mailto:mark.freake@dentons.com">mark.freake@dentons.com</a></p> <p>Lawyers for Mercedes-Benz Financial Services Canada Corporation</p>
<b>AND TO:</b>	<p><b>HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA</b> 1802 Douglas Street, 6<sup>th</sup> Floor Victoria, BC V8T 4K6</p> <p><b>c/o Jon Rielly (Receivables Management Office)</b> Fax: 1 (250) 356-1090 Email: <a href="mailto:Jon.Rielly@gov.bc.ca">Jon.Rielly@gov.bc.ca</a></p> <p>Crown charge registration pursuant to Provincial Sales Tax (British Columbia)</p>
<b>AND TO:</b>	<p><b>KRMC LLP</b> 25 Sheppard Avenue West – Suite 1100 Toronto, ON M2N 6S6</p> <p><b>Ron Aisenberg</b> Tel: (416) 218-5616 Email: <a href="mailto:raisenberg@krmc-law.com">raisenberg@krmc-law.com</a></p> <p>Lawyers for the Bank of Nova Scotia</p>

<b>AND TO:</b>	<b>FORD CREDIT CANADA COMPANY</b> PO Box 2400 Edmonton, AB T5J 5C7  Tel: 1 (877) 636-7346  <b>c/o LEGAL DEPARTMENT</b> <b>E.C. (Lisa) Kozma</b> Legal Counsel Tel: (905) 845-2511 Email: <a href="mailto:lkozma@ford.com">lkozma@ford.com</a>  PPSA registrant (Ontario)
<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>Diane Winters</b> Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a>
<b>AND TO:</b>	<b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE INSOLVENCY UNIT</b> 6th Floor, 33 King Street West Oshawa, ON L1H 8H5  <b>Leslie Crawford</b> Tel: (905) 433-5657 Email: <a href="mailto:leslie.crawford@ontario.ca">leslie.crawford@ontario.ca</a>  <b>Insolvency Unit</b> Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>

<b>AND TO:</b>	<b>MITCHELL &amp; ASSOCIATES</b> 420 Kildare Road Suite 201 Windsor, ON N8Y 3G4  <b>Bruce R. Mitchell</b> Tel: (519) 253-1226 Fax: (519) 253-6941 Email: <a href="mailto:bruce@mitchell77.com">bruce@mitchell77.com</a>  Lawyer for Ford Credit Canada Company
----------------	--

**EMAIL SERVICE LIST**  
**(as at December 8, 2021)**

[lwilliams@tgf.ca](mailto:lwilliams@tgf.ca); [adriedger@tgf.ca](mailto:adriedger@tgf.ca); [ecappello@csllp.ca](mailto:ecappello@csllp.ca); [bill@wgilmour.ca](mailto:bill@wgilmour.ca); [jparisi@bdo.ca](mailto:jparisi@bdo.ca); [mmarchand@bdo.ca](mailto:mmarchand@bdo.ca); [harvey@chaitons.com](mailto:harvey@chaitons.com); [stanvir@chaitons.com](mailto:stanvir@chaitons.com); [elaine.gray@dentons.com](mailto:elaine.gray@dentons.com); [mark.freake@dentons.com](mailto:mark.freake@dentons.com); [desmarais@jp-group.com](mailto:desmarais@jp-group.com); [Jon.Rielly@gov.bc.ca](mailto:Jon.Rielly@gov.bc.ca); [raisenberg@krmc-law.com](mailto:raisenberg@krmc-law.com); [lkozma@ford.com](mailto:lkozma@ford.com); [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca); [leslie.crawford@ontario.ca](mailto:leslie.crawford@ontario.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [bruce@mitchell77.com](mailto:bruce@mitchell77.com);



*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

**Respondents**

CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**NOTICE OF MOTION**  
**(Motion Returnable January 7, 2022 at 12:30 p.m.)**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
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Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver

**TAB 2**

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

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**NATIONAL BANK OF CANADA**

Applicant

- and -

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NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**AFFIDAVIT OF ADAM DRIEDGER  
(Sworn January 6, 2022)**

I, **ADAM DRIEDGER**, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY AS FOLLOWS:

1. I am an associate lawyer with the firm Thornton Grout Finnigan LLP, counsel to BDO Canada Limited in its capacity as court-appointed receiver and manager (the “**Receiver**”) of all of the property, assets, and undertakings of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc. (“**Nimbus Water**”), 365 Pro Installations Inc., 2242462 Ontario Limited, and Water Filter Cart Inc. (collectively, the “**Nimbus Group**”). As such, I have knowledge of the matters to which I depose herein and attest to the fact that they are true. Unless I indicate to the contrary, the facts herein

are within my personal knowledge. Where I have indicated that I have obtained facts from other sources, I have identified the sources and believe those facts to be true.

2. This affidavit is sworn in support of a motion by the Receiver for an order (the “**Name Change Order**”) authorizing and directing the Receiver to execute and file articles of reorganization pursuant to section 186 of the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 (the “**OBCA**”) or such other documents as may be required to change the legal name of Nimbus Water.

### **Nimbus Water Corporate Name Change**

3. By order of Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 13, 2021, a copy of which is attached hereto as **Exhibit “A”**, the Court approved the Stalking Horse Asset Purchase Agreement between the Receiver and 2752837 Ontario Inc. (the “**Purchaser**”) dated September 6, 2021 (the “**Stalking Horse APA**”).
4. By order of Justice Conway dated November 12, 2021, a copy of which is attached hereto as **Exhibit “B”**, the Court vested all of the Nimbus Group’s right, title, and interest in and to the Purchased Assets (as defined and described in the Stalking Horse APA) in two nominee corporations of the Purchaser.
5. Pursuant to the Stalking Horse APA:
  - (a) the Purchaser acquired, among other things, all of the goodwill associated with the name “Nimbus Water Systems”; and

- (b) if requested by the Purchaser, on or promptly following the Closing Date, the Receiver shall discontinue the use of the name “Nimbus Water Systems” and any variation thereof and shall, subject to the Court’s approval, as soon as reasonably practicable file articles of amendment to change the corporate name of Nimbus Water to another name not confusingly similar to its present name.
  
- 6. The Purchaser has requested that the Receiver discontinue the use of the name “Nimbus Water Systems” and change the corporate name of Nimbus Water to another name not confusingly similar to its present name.
  
- 7. Pursuant to the Receiver’s Undertaking Re: Post-Closing Items dated December 6, 2021 delivered in connection with the closing of the transaction contemplated by the Stalking Horse APA (the “**Undertaking**”), a copy of which is attached as **Exhibit “C”**:
  - (a) the Receiver agreed to obtain and deliver to the Purchaser, as soon as reasonably possible following the closing date, and prior to the filing for bankruptcy for any of the Nimbus Group entities, an endorsed Court order authorizing a corporate name change for Nimbus Water; and
  - (b) the Receiver agreed to deliver to the Purchaser, within three business days of obtaining such order, and prior to filing for bankruptcy for any of the Nimbus Group entities, articles of reorganization to change the corporate name for Nimbus Water and to provide a copy of the accepted articles once received.
  
- 8. Pursuant to section 186 of the OBCA, under which Nimbus Water was incorporated, if a corporation is subject to a “reorganization” (including pursuant to the *Bankruptcy and*

*Insolvency Act*), its articles may be amended by an order to effect any change that might lawfully be made by an amendment under section 168.

9. I understand that the Receiver requires the Name Change Order to effect the name change required pursuant to the Stalking Horse APA and the Undertaking.
10. I swear this affidavit in support of the Receiver's motion for the Name Change Order and for no other or improper purpose.

SWORN remotely via videoconference, by ADAM DRIEDGER stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of January, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*



\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.

Derek Harland  
LSO#: 79504N



\_\_\_\_\_  
**ADAM DRIEDGER**

# **EXHIBIT “A”**

This is Exhibit “A” referred to in the Affidavit of Adam Driedger sworn remotely via videoconference, by ADAM DRIEDGER stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of January, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



---

A Commissioner for taking affidavits



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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

THE HONOURABLE ) MONDAY, THE 13<sup>TH</sup>  
)  
JUSTICE CAVANAGH ) DAY OF SEPTEMBER, 2021

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**ORDER  
(Approving SISP)**

**THIS MOTION** made by BDO Canada Limited, in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents for an order, *inter alia*, approving the sale and investment solicitation process (the “**SISP**”) and for the return of property of the Respondents, was heard this day via videoconference in light of the COVID-19 pandemic.

**ON READING** the First Report of the Receiver dated September 8, 2021 (the “**First Report**”) and the Appendices thereto and on hearing the submissions of counsel for the Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn September 9, 2021.

#### **SERVICE AND DEFINITIONS**

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

#### **APPROVAL OF FIRST REPORT**

3. **THIS COURT ORDERS** that the activities described in the First Report, and the activities and conduct of the Receiver set out therein are hereby ratified and approved.

#### **FUNDING OF THE RECEIVERSHIP**

4. **THIS COURT ORDERS** that the Receiver’s Borrowing Charge, be and is hereby increased from \$100,000 to \$250,000.

#### **RETURN OF PROPERTY**

5. **THIS COURT ORDERS** that any person in possession or control of any Related Party Vehicle attached hereto as **Schedule “A”** or any Passcodes immediately make arrangements with the Receiver for the return of such Related Party Vehicle or Passcodes. In the event that any such

person does not make such arrangements on or before September 17, 2021, the Receiver may seek further direction from the Court.

6. **THIS COURT ORDERS** that any person in possession of any funds properly belonging to the Respondents, including but not limited to Kimolla Blair, immediately make arrangements with the Receiver for the return of such funds. In the event that any such person does not return the funds in their possession on or before September 17, 2021, the Receiver may seek further direction from the Court.

#### **APPROVAL OF SISP AND STALKING HORSE AGREEMENT**

7. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution by the Receiver of the Stalking Horse Agreement with 2752837 Ontario Inc. (the “**Stalking Horse Bidder**”) as purchaser is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Purchased Assets (as defined in the Stalking Horse Agreement) in and to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that the approval of the sale and vesting of such Purchased Assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the SISP.

8. **THIS COURT ORDERS** that that the SISP attached hereto as **Schedule “B”** (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Receiver is authorized and directed to carry out the SISP in accordance with its terms and this Order, and are hereby authorized and directed to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

9. **THIS COURT ORDERS** that the Receiver, its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Receiver, as determined by this Court.

#### **BANKRUPTCY OF RESPONDENTS**

10. **THIS COURT AUTHORIZES** the Receiver to file an assignment in bankruptcy on behalf of any of the Respondents with BDO as bankruptcy trustee.

#### **GENERAL**


11. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

13. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

14. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the applicable Respondent's Unitholders, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

 Digitally signed by  
Mr. Justice  
Cavanagh

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**Schedule "A"**  
**List of Related Party Vehicles**

	<b>PLATE</b>	<b>DRIVER ASSIGNED</b>	<b>VEHICLE MODEL</b>	<b>VIN #</b>
1.	BWDH906	Iola Bozzo	GMC YUKON XL	1GKS2HKJ5GR396511
2.	CDZS590	Mia Bozzo	JEEP WRANGLER	1C4BJWEG4JL825117
3.	CHRP250	Peter Bozzo	INFINITI Q60	JN1FV7EL0HM702026
4.	CEEA567	Santo Bozzo	JEEP GRAND CHEROKEE	1C4RJFBG8JC262477
5.	BZHN123	Anthony Bozzo	INFINITI JX35	5N1AL0MM4DC331723
6.	AX53770	Unknown	DODGE GRAND CARAVAN	2C4RDGBG5JR349967
7.	AX53673	Peter Bozzo	DODGE GRAND CARAVAN	2C4RDGBG9JR349969
8.	BWSE451	Unknown	INFINITI G37X	JN1CV6EL5AM152891
9.	AR51825	Unknown	DODGE GR CARAVAN	2D4CN1AE3AR225909
10.	CEKF386	Unknown	MERCEDES BENZ GLS450	4JGDF6EE7JB114537
11.	CLCN611	Sergio Musci	INFINITI Q60 SPORT	JN1FV7EL0HM701619
12.	CMEV687	Chrisoula Bozzo	JEEP COMPASS	3C4NJDBB1LT124729

**Schedule "B"**  
**Sale and Investment Solicitation Process**

**INTRODUCTION**

By order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 23, 2021 (the "**Appointment Order**"), BDO Canada Limited ("**BDO**") was appointed as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings, and properties (the "**Property**") of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited and Water Filter Cart Inc. (collectively, the "**Nimbus Group**").

**THE OPPORTUNITY**

It is anticipated that, on or about September 13, 2021, the Receiver will, *inter alia*, apply to the Court to approve the sale and investment solicitation process ("**SISP**") described herein (the "**Process Approval Order**"). It is further anticipated that the Process Approval Order will also (i) authorize the Receiver to enter into a fully binding and conditional purchase and sale agreement (the "**Stalking Horse Agreement**") between the Receiver and 2752837 Ontario Inc. (the "**Stalking Horse Bidder**") pursuant to which the Stalking Horse Purchaser will make an offer to purchase substantially all of the assets of the Nimbus Group; and (ii) approve the transaction contemplated by the Stalking Horse Agreement.

The Opportunity may involve the recapitalization, investment in, arrangement or reorganization of the Nimbus Group or the business of the Nimbus Group (the "**Business**") as a going concern or a sale of some or all of the Property as a going concern or otherwise, or some combination thereof (each, a "**Transaction**").

The Process Approval Order, the procedures in respect of the SISP as contained herein (the "**SISP Procedures**") and any subsequent orders issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the Transaction.

The purpose of these SISP Procedures is to determine whether a better Transaction than the Stalking Horse Agreement may be obtained by the Receiver in a formal marketing process approved by the Court. For the purposes of these SISP Procedures, a "**Superior Offer**" shall mean:

- a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
- b) an offer that provides for cash consideration in an amount equal to the purchase price in the Transaction, plus (i) the Break Fee and Expense Reimbursement (each as defined terms in the Stalking Horse Agreement) in the total amount of \$300,000.00; and (ii) an incremental increase of \$100,000.

Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as defined below), any sale of the Property or investment in the Nimbus Group will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, or any of their respective agents, advisors or representatives, and, in the event of a sale, all of the right, title and interest of the Nimbus Group in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court order, except as otherwise provided in such Court order.

## TIMELINE

The following table sets out the key milestones under the SISP:

Milestone	Deadline
Commencement of SISP	September 13, 2021
Distribution of the Notice and Teaser Letter	September 13, 2021
Bid Deadline	October 13, 2021
Auction	No later than October 20, 2021
Sale Approval Hearing	No later than October 29, 2021
Outside Closing Date Deadline	November 26, 2021

The dates set out in the SISP may be extended by the Receiver in their sole discretion.

## SOLICITATION OF INTEREST

As soon as reasonably practicable:

1. the Receiver will prepare a list of potential bidders, including (i) parties that have approached the Receiver indicating an interest in the opportunity, and (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Business and Property or investing in the Nimbus Group pursuant to the SISP (collectively, “**Known Potential Bidders**”);
2. the Receiver will arrange for a notice of the SISP (and such other relevant information which the Receiver considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and any other newspaper or journal as the Receiver considers appropriate, if any; and
3. the Receiver will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (an “**NDA**”).



The Receiver will publish the Notice and send the Teaser Letter and NDA to all Known Potential Bidders by no later than September 17, 2021 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

## **INTERESTED PARTIES**

### *Delivery of Confidential Information Package*

Any party who wishes to participate in the SISP must provide to the Receiver, unless the Receiver confirms to such potential bidder that the below documents are already available to the Receiver, the following:

1. an NDA executed by it and a letter setting forth the identity of the potential bidder, the contact information for such potential bidder and full disclosure of the direct and indirect principals of the potential bidder; and
2. such form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the potential bidder's financial and other capabilities to consummate a transaction that would constitute a Superior Offer.

If the Receiver determines, exercising its reasonable business judgment that a bidder: (i) has delivered the documents contemplated in the immediately preceding paragraph; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP, then such bidder shall be deemed to be a "**Qualified Bidder**". For greater certainty, no bidder shall be deemed not to be a Qualified Bidder without the approval of the Receiver.

At any time during Phase 1 of the SISP, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the SISP, in which case such Qualified Bidder will be eliminated from the SISP and will no longer be a Qualified Bidder for the purposes of the SISP.

The Receiver will prepare and send to each Qualified Bidder a confidential information package providing additional information considered relevant to the potential Transaction (the "**Confidential Information Package**").

The Receiver and its respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver.

Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any Transaction they enter into with the Receiver.

## *Due Diligence*

The Receiver shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver in its reasonable business judgment may agree.

The Receiver will designate a representative to coordinate all reasonable requests for additional information and due diligence access from a Qualified Bidder and the manner in which such requests must be communicated. The Receiver will not be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidder. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Receiver determines such information to represent proprietary or sensitive competitive information.

## **FORMAL BINDING OFFERS**

Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Nimbus Group or its Property and Business (a “**Bidder**”) shall submit a binding offer (the “**Bid**”) that complies with all of the following requirements to the Receiver at the addresses specified in Schedule “**A**” hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on October 13, 2021 (the “**Bid Deadline**”):

1. the Bid may be an offer to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), or to make an investment in, restructure, reorganize or refinance the Business (an “**Investment Proposal**”), or such other structure as the Bidder may propose;
2. in the case of a Sale Proposal, it identifies or contains the following:
  - a. the purchase price in Canadian dollars, including details of any liabilities to be assumed by the Bidder and key assumptions supporting the valuation;
  - b. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - c. a specific indication of the financial capability of the Bidder and the expected structure and financing of the transaction;
  - d. a description of the conditions and approvals required for a final and binding offer;
  - e. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

- f. any other terms or conditions of the Sale Proposal that the Bidder believes are material to the transaction;
3. in the case of an Investment Proposal, it identifies the following:
  - a. a description of how the Bidder proposes to structure the proposed investment;
  - b. the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars;
  - c. the underlying assumptions regarding the pro forma capital structure;
  - d. a specific indication of the sources of capital for the Bidder and the structure and financing of the Transaction;
  - e. a description of the conditions and approvals required for a final and binding offer;
  - f. an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
  - g. all conditions to closing that the Bidder may wish to impose; and
  - h. any other terms or conditions of the Investment Proposal that the Bidder believes are material to the transaction;
4. in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Receiver and it has a reasonable prospect of resulting in a Superior Offer.
5. the Bid includes a letter stating that the Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Bidder is selected as the Successful Bidder (as defined below), its offer shall remain irrevocable until the closing of the Transaction with the Successful Bidder;
6. the Bid includes duly authorized and executed Transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
7. the Bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed Transaction, that will allow the Receiver to make a determination as to the Bidder's financial and other capabilities to consummate the proposed Transaction;
8. the Bid is not conditional on:

- a. the outcome of any further due diligence by the Bidder, apart from, if applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld during the due diligence process prior to the Bid Deadline, or
  - b. obtaining financing;
9. the Bid fully discloses the identity of each entity or person that will be entering into the Transaction, that is participating in, or benefiting from, such bid, including any equity holders;
10. for a Sales Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the Purchase Price offered upon the Bidder being selected as the Successful Bidder (as defined below);
11. for an Investment Proposal, the Bid includes a commitment by the Bidder to provide a non-refundable deposit in the amount of not less than 5% of the total new investment contemplated in the bid upon the Bidder being selected as the Successful Bidder (as defined below);
12. the Bid includes acknowledgments and representations from the Bidder that the Bidder:
  - a. has had an opportunity to conduct any and all due diligence regarding the Property, and Business prior to making its offer (apart from, to the extent applicable, the disclosure of any due diligence materials representing proprietary or sensitive competitive information withheld during the due diligence process prior to the Bid Deadline);
  - b. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - c. did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business or the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s);
13. the Bid is received by the Bid Deadline;
14. the Bid constitutes, in the reasonable business judgment of the Receiver, a Superior Offer; and
15. the Bid contemplates closing the Transaction set out therein on or before November 26, 2021 (the “**Closing Date**”).

A Bid that qualifies with the requirements set out above shall be considered a “**Qualified Bid**”. For greater certainty, the Stalking Horse Agreement shall be deemed to be a Qualified Bid.

The Receiver may waive strict compliance with any one or more of the non-material foregoing requirements and deem such non-compliant bids to be a Qualified Bid.

## **SELECTION OF SUCCESSFUL BIDDERS**

Following the Bid Deadline, the Receiver will assess the Bids received in consultation with the Applicant, National Bank of Canada (the “**Bank**”). The Receiver shall approve the disqualification of any Bids that are deemed not to be Qualified Bids. Only Bidders whose Bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

The Receiver shall notify each Bidder in writing as to whether its Bid constituted a Qualified Bid within two (2) business days following the Bid Deadline, or at such later time as the Receiver deems appropriate, in consultation with the Bank.

If no Qualified Bids (either individually or in the aggregate), other than the Stalking Horse Agreement have been received by the Bid Deadline, then the Receiver may consider an extension of the Bid Deadline for up to 7 business days to allow any party that submitted a Bid to consult with the Receiver and to revise such Bid such that it would provide for, or that might reasonably be expected to provide for, a Superior Offer.

### ***Evaluation of Competing Bids***

A Qualified Bid will be evaluated upon many factors, including, without limitation, items such as:

1. the Purchase Price and the net value provided by such Qualified Bid,
2. the identity, circumstances and ability of the Bidder to successfully complete such Transaction,
3. the proposed Transaction documents,
4. factors affecting the speed, certainty and value of the Transaction,
5. the assets included or excluded from the Bid,
6. the likelihood and timing of consummating such Transaction, and
7. whether the Transaction results in a Superior Offer.

each as determined by the Receiver, in consultation with the Bank.

### ***Selection of Successful Bid***

The Receiver shall:

1. first, review and evaluate each Qualified Bid, provided that the Receiver may contact any Bidder to clarify the terms of any Bid, and the applicable Bidder may amend, modify or vary such Bid for the purpose of clarification;

2. second, identify if any Qualified Bid is a Superior Offer; and
3. third, if one or more Qualified Bids are considered to be Superior Offers, those Qualified Bidders presenting a Superior Offer shall proceed to an auction with the Stalking Horse Bidder to be held on or before October 20, 2021 (the “**Auction**”), which shall proceed according to the Auction Procedures set out in **Schedule “B”** to this SISP to identify the “**Successful Bid**”, and the Bidder making such Successful Bid, the “**Successful Bidder**”.

If no Superior Offer is received by the Bid Deadline, the Auction will not be held and the Stalking Horse Bidder will be declared to be the Successful Bidder. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.

### ***Sale Approval Motion Hearing***

At the hearing of the motion to approve any Transaction with a Successful Bidder (the “**Sale Approval Hearing**”), the Receiver shall seek, among other things, approval from the Court to consummate the Successful Bid. All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

### **DEPOSIT**

All deposits shall be held by the Receiver in a single noninterest-bearing account designated solely for such purpose. A deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as the Successful Bidder shall be returned to such Bidder within three business days of Court approval of the Successful Bid.

### **CONFIDENTIALITY AND ACCESS TO INFORMATION**

All discussions regarding a Transaction, Sale Proposal, Investment Proposal, Bid or Successful Bid should be directed through the Receiver. Under no circumstances should the management of the Nimbus Group or its customers be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP at the discretion of the Receiver.

Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Qualified Bidders, Bidders, Qualified Bids, the details of any Bids or Qualified Bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other Bidders or Qualified Bidders in connection with the SISP, except to the extent that the Receiver, with the consent of the applicable participants, is seeking to combine separate Bids into a single Bid.

Notwithstanding the foregoing, under no circumstances will the Receiver share any material information concerning any of the Bids with any person other than the Bank.

## **SUPERVISION OF THE SISP**

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver and any Qualified Bidder, Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver.

Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Qualified Bidder, Bidder, the Successful Bidder, the Receiver or any other creditor or other stakeholder of the Receiver, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from gross negligence or wilful misconduct of the Receiver. By submitting a Bid, each Bidder or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver in respect of the SISP for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct by the Receiver.

Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

## **Schedule “A”**

### **Addresses of Receiver**

#### **To the Receiver**

**BDO Canada Limited**  
20 Wellington Street East, Suite 500  
Toronto, ON M5E 1C5

Attention: Josie Parisi  
Email: [jparisi@bdo.ca](mailto:jparisi@bdo.ca)



## Schedule "B"

### AUCTION PROCEDURES

1. On or before October 15, 2021, the Receiver will confirm those Qualified Bidders who present a Superior Offer ("**Superior Bidders**") that their Bid will be advanced to the Auction.
2. Unless otherwise ordered by the Court, only the authorized representatives, professional advisors or agents of the Stalking Horse Bidder and each Superior Bidder shall be eligible to attend at the Auction and make any Subsequent Bid (as defined below) at the Auction.
3. The Auction, if any, shall be conducted by the Receiver, on or before October 20, 2021 at 10:00 a.m. (Eastern Time) via video conference.
4. At the Auction, all Superior Bidders and the Stalking Horse Bidder shall be permitted to increase their Superior Bids and the Stalking Horse Agreement in accordance with the procedures set forth herein (each, a "**Subsequent Bid**"). All Subsequent Bids presented during the Auction shall be made and received via video conference on an open basis. All participating Superior Bidders and the Stalking Horse Bidder shall be entitled to be present for all bidding with the understanding that the true identity of each participating Superior Bidder shall be fully disclosed to all other Superior Bidders and the Stalking Horse Bidder and that all material terms of each Subsequent Bid presented during the Auction will be fully disclosed to the Stalking Horse Bidder and all other participating Superior Bidders throughout the entire Auction.
5. All Superior Bidders and the Stalking Horse Bidder at the Auction must have at least one individual representative with authority to bind such Superior Bidder and the Stalking Horse Bidder present at the Auction.
6. The Auction shall be recorded by the Receiver for their exclusive use and shall not be recorded by any other party.
7. At least three (3) days prior to the Auction, the Receiver will advise the Stalking Horse Bidder and all other Superior Bidders which of the Superior Bid or of the Stalking Horse Bidder the Receiver has determined in its reasonable business judgment, after consultation with its advisors and with the Bank, constitutes the then highest or otherwise best offer Sale Proposal or Investor Proposal (the "**Starting Bid**").
8. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Superior Bidder or the Stalking Horse Bidder that (i) improves upon such Superior Bidder's immediately prior Superior Bid or upon the Stalking Horse Agreement, as the case may be, and meets the overbid requirement set forth in paragraph 8 below, and (ii) the Receiver determines, in its reasonable business judgment, after consultation with its advisors and with the Bank, such Subsequent Bid is a higher or otherwise better offer than the then current leading Superior Bid.

9. Bidding at the Auction shall be in increments of \$100,000 and shall continue until such time as the highest and best bid is determined by the Receiver's reasonable business judgment after consultation with its advisors and with the Bank. For the purpose of evaluating the value of the consideration provided by each bid (including any Subsequent Bid by the Stalking Horse Bidder) presented at the Auction, the value will: (i) be deemed to be the net consideration payable to the Receiver after considering, *inter alia*, any Break Fee and Expense Reimbursement due to the Stalking Horse Bidder under the Stalking Horse Agreement; and (ii) take into account any additional liabilities to be assumed by a Superior Bidder.
10. After the first round of bidding and between each subsequent round of bidding, the Receiver shall announce the Subsequent Bid that the Receiver has determined in its reasonable business judgment, after consultation with its advisors and with the Bank, to be the then highest or best bid (the "**Leading Bid**"). A round of bidding will conclude after each participating Superior Bidder and the Stalking Horse Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.
11. If no Superior Bidder or the Stalking Horse Bidder submits a Subsequent Bid (as determined by the Receiver) after a period of 30 minutes following the Receiver's acceptance of a Subsequent Bid as the Leading Bid, and the Receiver chooses not to adjourn the Auction further, the Receiver shall enter into a binding agreement of purchase and sale or investment substantially on the same terms as the Superior Bid or the Stalking Horse Agreement (as the case may be), as amended by the Leading Bid, with the Superior Bidder or the Stalking Horse Bidder (the Successful Bidder) that submitted the highest and best bid as determined by the Receiver (the "**Accepted Bid**"), whereupon the Auction will be concluded.
12. At the Auction, the Receiver, after consultation with its advisors and with the Bank, may employ and announce additional procedural rules that are fair and reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; provided, however, that such rules are (a) not inconsistent with the Auction Procedures, the *Bankruptcy and Insolvency Act*, any order of the Courts entered in connection with the Auction Procedures and (b) disclosed to each Superior Bidder and the Stalking Horse Bidder at the Auction.

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

Respondents

Court File No. CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER  
(approving SISF)**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

**Adam Driedger (LSO #77296F)**  
Email: [adriedger@tgf.ca](mailto:adriedger@tgf.ca)  
Tel.: (416) 304-1152

Lawyers for the Receiver

**EXHIBIT “B”**

This is Exhibit “B” referred to in the Affidavit of Adam Driedger sworn remotely via videoconference, by ADAM DRIEDGER stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of January, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



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A Commissioner for taking affidavits

Court File No. CV-21-00667395-00CL

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

THE HONOURABLE MADAM )  
 )  
JUSTICE BARBARA A. CONWAY ) FRIDAY, THE 12<sup>TH</sup>  
 ) DAY OF NOVEMBER, 2021

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited, and Water Filter Cart Inc. (collectively, the “**Debtor**”) for an order, among other things, vesting in In-Store Water Purification Inc. (“**In-Store**”) and 1000014274 Ontario Inc. (“**100 Ontario**”) all of the Debtor’s right, title and interest in and to the assets (the “**Purchased Assets**”) described in the agreement of purchase and sale (the “**Sale**



**Agreement**") between the Receiver and 2752837 Ontario Inc. (the "**Purchaser**") dated September 6, 2021 and appended to the First Report of the Receiver dated September 8 (the "**First Report**") and the Second Report of the Receiver dated November 1, 2021 (the "**Second Report**"), was heard this day by way of judicial videoconference in light of the COVID-19 pandemic.

**ON READING** the First Report, the Second Report, the Supplement to the Second Report of the Receiver dated November 11, 2021, the Affidavit of Peter Bozzo sworn November 9, 2021, the Affidavit of Antonio Mainieri sworn November 9, 2021, the Affidavit of Colin James sworn November 10, 2021, and the Affidavit of Stefan Caserta sworn November 10, 2021, and on hearing the submissions of counsel for the Receiver and those other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Adam Driedger sworn November 3, 2021 filed,

## **SERVICE**

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

## **VESTING OF PURCHASED ASSETS**

2. **THIS COURT ORDERS AND DECLARES** that the sale and vesting of the Purchased Assets in and to In-Store and 100 Ontario pursuant to the Sale Agreement is hereby authorized and approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Sale Agreement (the "**Transaction**") and for the conveyance of the Purchased Assets to In-Store and 100 Ontario. For clarity, subject to and in accordance with the provisions

hereof and the Sale Agreement, the Real Property (as defined below) shall vest in and to 100 Ontario and all of the Purchased Assets that are not the Real Property (collectively, the “**Business Assets**”) shall vest in and to In-Store.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Receiver’s Certificate**”): (i) all of the Debtor’s right, title and interest in and to the Business Assets shall vest absolutely in In-Store; and (ii) all of the Debtor’s right, title and interest in and to the real property described at Schedule “B” hereto (the “**Real Property**”), shall vest absolutely in 100 Ontario, in each case, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated August 23, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (LRO #80) of an Application for Vesting Order in the form



prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter 100 Ontario as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “C” hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to In-Store all human resources and payroll information in the Company’s records pertaining to the Debtor’s past and current employees, including personal information of the Transferred Employees (as defined in the Sale Agreement). In-Store shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

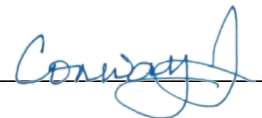
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in In-Store and 100 Ontario pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

## **GENERAL**

9. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-21-00667395-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Haaney of the Ontario Superior Court of Justice (the “**Court**”) dated August 23, 2021, BDO Canada Limited (“**BDO**”) was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited, and Water Filter Cart Inc. (collectively, the “**Debtor**”).

B. Pursuant to an Order of the Court dated November 9, 2021, the Court approved the vesting in In-Store Water Purification Inc. (“**In-Store**”) and 1000014274 Ontario Inc. (“**100 Ontario**”) of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) pursuant to the agreement of purchase and sale made as of September 6, 2021 (the “**Sale Agreement**”) between the Receiver and 2752837 Ontario Inc. (the “**Purchaser**”), which

vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of the Debtor, and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Real Property**

**Real Property**

PIN10293-0072(LT): PCLS 123-1 & 124-1 SECT. M770 LOTS 123 & 124 PL 66M770 TWP OF YORK/NORTH YORK, CITY OF TORONTO,

and municipally known as 112 Oakdale Road, Toronto, Ontario.

**Schedule C – Claims to be deleted and expunged from title to Real Property**

**PIN10293-0072 (LT)**

<b>Instrument No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
AT3758190	2014/12/04	Transfer	112 Oakdale Road Limited	2422343 Ontario Limited
AT3832266	2015/03/13	Application to Change Name-Owner	2422343 Ontario Limited	2422343 Ontario Inc.
AT5209558	2019/08/13	Application to Change Name-Owner	2422343 Ontario Inc.	Oakdale Enterprises Inc.
AT5237573	2019/09/16	Charge	Oakdale Enterprises Inc.	National Bank of Canada
AT5237574	2019/09/16	Notice Of Assignment Of Rents-General	Oakdale Enterprises Inc.	National Bank of Canada
AT5840692	2021/08/25	Application To Register Court Order	Ontario Superior Court of Justice	National Bank of Canada

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

**General:**

- (a) any registered reservations, restrictions, rights of way, easements or covenants that run with the Buildings and Lands;
- (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
- (c) all laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Buildings and Lands;
- (d) any minor easements for the supply of utility service to the Buildings and Lands or adjacent properties;
- (e) encroachments disclosed by any errors or omissions in existing surveys of the Buildings and Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the land and survey matters generally;
- (f) the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
- (g) the reservations contained in the original grant from the Crown;
- (h) liens for Taxes if such Taxes are not due and payable; and
- (i) the following instruments registered against title to the Buildings and Lands:

**Specific:**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
B22893	1958/10/31	Notice Agreement		The Corporation of the Township of North York
66BA760	1961/06/29	Plan Boundaries Act		
E317117	2000/03/27	Notice	Her Majesty The Queen in Right of the Department of Transport Canada	

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

Respondents

Court File No. CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

**Thornton Grout Finnigan LLP**

TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7

**Leanne M. Williams** (LSO# 41877E)

Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)

Tel: (416) 304-0060

**Adam Driedger** (LSO #77296F)

Email: [adriedger@tgf.ca](mailto:adriedger@tgf.ca)

Tel.: (416) 304-1152

Lawyers for the Receiver



# **EXHIBIT “C”**

This is Exhibit “C” referred to in the Affidavit of Adam Driedger sworn remotely via videoconference, by ADAM DRIEDGER stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of January, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



---

A Commissioner for taking affidavits

RECEIVER'S UNDERTAKING RE. POST-CLOSING ITEMS

**TO:** IN-STORE WATER PURIFICATION INC. and 1000014274 ONTARIO INC.  
(the "Purchaser")

**AND TO:** CHAITONS LLP, their solicitors herein

**RE:** BDO Canada Limited, in its capacity as the Court-appointed receiver of the undertaking, property and assets of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited and Water Filter Cart Inc. (collectively the "Debtors" or singularly a "Debtor"), in the sale to 2752837 Ontario Inc. of the Purchased Assets as such term is defined in an asset purchase agreement dated as of September 6, 2021 (the "Purchase Agreement")

**DATED:** December 6, 2021

In consideration of and notwithstanding the closing of the above-captioned transaction, the undersigned hereby undertake as follows:

1. To obtain and deliver to you, as soon as reasonably possible following the Closing Date of the transactions contemplated in the Purchase Agreement and prior to filing for bankruptcy for any of the Debtors, an endorsed Court order authorizing a corporate name change for "Nimbus Water Systems Inc.";
2. To file and deliver to you, within Three (3) Business Days of obtaining the Court order listed above in Section 1 and prior to filing for bankruptcy for any of the Debtors, Articles of Reorganization to change the corporate name, "Nimbus Water Systems Inc." and to provide a copy of the accepted Articles once received;
3. To obtain and deliver to you, as soon as reasonably possible following the Closing Date of the transactions contemplated in the Purchase Agreement and prior to filing for bankruptcy for any of the Debtors, executed assignment agreements regarding the following contracts (collectively the "Assignment Agreements"):

Item	Parties	Title of Contract	Date
1	Buy-Low Foods LP and Nimbus Water Systems Inc.	Equipment Placement Agreement	December 22, 2017
2	Buy-Low Foods LP and Nimbus Water Systems Inc.	Equipment Placement Agreement (slight amendment to the Agreement above)	December 22, 2017
3	Toronto Transit Commission and Nimbus Water Systems	Supply and Installation Agreement (Notice of Award with Pricing (C25PH19854))	August 27, 2019
4	Toronto Transit Commission and Nimbus Water Systems	Supply and Installation Agreement (Pricing from Notice of Award)	August 27, 2019

5	Farm Credit Canada and Nimbus Water Systems Inc.	Professional Services Agreement	October 1, 2020
6	Farm Credit Canada and Nimbus Water Systems Inc.	Professional Services Agreement	February 11, 2021

4. To make full payment and deliver to you, as soon as reasonably possible following the Closing Date of the transactions contemplated in the Purchase Agreement and prior to filing for bankruptcy for any of the Debtors, written payment proof satisfactory to you in your sole and unfettered discretion, that all and any Cure Costs associated with the Assignment Agreements referred to above in Section 3 have been satisfied;
5. To file discharges and provide to you, as soon as reasonably possible after the funds to pay off such PPSAs are distributed to National Bank of Canada in accordance with a distribution order to be obtained from the Court with respect to the below Debtor, written proof of discharges of the following *Personal Property Security Act* registrations in favour of National Bank of Canada and against the following Debtor:

Province	Debtor	PPSA Registration Number	Secured Party
Ontario	Oakdale Enterprises Inc.	20190802 1449 1793 7930	National Bank of Canada

6. To make full payment and deliver to you, on or prior to January 5, 2022, written payment proof satisfactory to you in your sole and unfettered discretion, that the following charges incurred with Toronto Hydro-Electric System Limited with respect to 112 Oakdale Road, North York, Ontario (Hydro Account Number 9227356592, Meter Number 10715466) have been satisfied:
  - a. All outstanding charges under Electricity Bill, dated November 4, 2021;
  - b. All outstanding charges under Electricity Bill, dated December, 2021 for charges incurred during the month of November; and
  - c. All further charges incurred under the above Hydro Account Number, up to and including the Closing Date;
7. To make full payment and deliver to you, on or prior to January 5, 2022, written payment proof satisfactory to you in your sole and unfettered discretion, that the following charges incurred with the City of Toronto with respect to 112 Oakdale Road, North York, Ontario (Utility Account Number 000167029 001278147 03) have been satisfied:
  - a. All outstanding utility/water charges under any future Utility Statement issued on or around December 6, 2021 (and prior to January 15, 2022) for charges incurred under the above Utility Account Number, up to and including the Closing Date; and
8. To obtain and deliver to you, as soon as reasonably possible following the Closing Date of the transactions contemplated in the Purchase Agreement, a copy of the executed Termination Agreement of the Lease Agreement dated October 12, 2016 between Nimbus Water Systems Inc. and EEDG Canada Inc. for the premises located at Suite 114, 9125 Pascal Gagnon, Montreal, Quebec; and

9. To provide and deliver to you, within Seven (7) Business Days of you making a written request, a validated HST Number, returns, certificates, filings, elections, notices or other documents required to be filed by 2242462 Ontario Limited with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Purchased Assets, whether arising from a Canada Revenue Agency tax reassessment or otherwise, including provincial retail sales tax and HST, if applicable.

Unless otherwise indicated, capitalized terms used herein shall have the same meanings ascribed thereto in the Purchase Agreement.

The undersigned further undertakes, covenants and agrees to be responsible for any and all costs and expenses relating to the herein undertakings.


This Undertaking shall be governed by the laws of the Province of Ontario and shall enure and be binding upon the undersigned's successors and assigns.

This Undertaking may be signed in counterparts and by electronic transmission, each of which shall for all purposes be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

*[remainder of page intentionally left blank, signature page follows]*

DATED as of the date first above written.

**BDO CANADA LIMITED, in its capacity as the  
Court-appointed receiver of the undertaking,  
property and assets of each of NIMBUS  
ENVIRONMENTAL SOLUTIONS INC.,  
OAKDALE ENTERPRISES INC., NIMBUS  
WATER SYSTEMS INC., 365 PRO  
INSTALLATIONS INC., 2242462 ONTARIO  
LIMITED and WATER FILTER CART INC.**

Per:   
Name: Josie Parisi  
Title: Senior Vice-President

I have authority to bind the Receiver.

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

**Respondents**

CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF ADAM DRIEDGER**  
(Sworn January 6, 2022)

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver

## **TAB 3**



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

THE HONOURABLE MR. ) FRIDAY, THE 7<sup>TH</sup>  
)  
JUSTICE MCEWEN ) DAY OF JANUARY, 2022

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,  
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**ORDER  
(Re: Name Change)**

**THIS MOTION**, made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of each of the Respondents for an order authorizing the Receiver to change the name of Nimbus Water Systems Inc., was heard this day by way of judicial videoconference in light of the COVID-19 pandemic.

**ON READING** the Affidavit of Adam Driedger dated January 6, 2021, and on hearing the submissions of counsel for the Receiver,

## **SERVICE**

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

## **NAME CHANGE**

2. **THIS COURT ORDERS** that (i) the Receiver is hereby authorized, directed and permitted to execute and file articles of reorganization or such other documents or instruments as may be required (including any necessary corporate resolutions and the authority to request and obtain a corporation key) to change the legal name of Nimbus Water Systems Inc. ("**Nimbus**"), and such articles, documents or other instruments (including any corporation key or necessary corporate resolutions) and shall be deemed to be duly authorized, valid and effective and shall be accepted by the Director, as defined in, and appointed under the Ontario *Business Corporations Act*, without the requirement (if any) of obtaining director, partner or shareholder approval pursuant to any federal or provincial legislation, and (ii) any third party requirements, required consents or solvency requirement pursuant to any federal or provincial legislation relating to same shall be waived.

## **CHANGE OF TITLE OF PROCEEDINGS**

3. **THIS COURT ORDERS** that upon the official change of the legal name of Nimbus, the name of Nimbus in the within title of proceedings shall be deleted and replaced with "1966578 Ontario Inc.", the new legal name of Nimbus, and the title of these proceedings shall hereby be amended as set out at Schedule "A" hereto:

---

**Schedule "A"**  
**Amended Title of Proceedings**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

**B E T W E E N:**

NATIONAL BANK OF CANADA

Applicant

- and -

NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,  
1966578 ONTARIO INC., 365 PRO INSTALLATIONS INC., 2242462 ONTARIO LIMITED  
AND WATER FILTER CART INC.

Respondents

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

Applicant

**Respondents**

CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER**  
**(Re: Name Change)**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

**NATIONAL BANK OF CANADA**

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al**

- and -

Applicant

**Respondents**

CV-21-00667395-00CL

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD  
(Returnable January 7, 2022)**

**Thornton Grout Finnigan LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**Leanne M. Williams (LSO# 41877E)**  
Email: [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca)  
Tel: (416) 304-0060

Lawyers for the Receiver