

**METRO PAVING AND ROADBUILDING LTD.,  
METRO PAVING LTD., METRO PARS  
CORPORATION and GRASSLANDS  
OF BEISEKER DEVELOPMENT CORPORATION**

CLERK'S STAMP

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COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	BANK OF MONTREAL
RESPONDENT	METRO PAVING AND ROADBUILDING LTD., METRO PAVING LTD., METRO PARS CORPORATION, and GRASSLANDS OF BEISEKER DEVELOPMENT CORPORATION
DOCUMENT	<b>THIRD REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY AS RECEIVER dated June 21, 2021</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>Cassels Brock &amp; Blackwell LLP</b> Barristers and Solicitors 3810, Bankers Hall West 888 – 3 <sup>rd</sup> Street S.W. Calgary, Alberta T2P 5C5 Attention: Jeffrey Oliver / Danielle Marechal Telephone No.: 403-351-2921 Fax No.: 403-648-1151 Client File No.: 28677-31

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## I. INTRODUCTION

1. BDO Canada Limited (“**BDO**”), was appointed as receiver and manager (the “**Receiver**”), of all of the assets, undertakings and properties (the “**Property**”) of Metro Paving and Roadbuilding Ltd. (“**Metro Roadbuilding**”), Metro Paving Ltd (“**Metro Paving**”), Metro Pars Corporation (“**Metro Pars**”) and Grasslands of Beiseker Development Corporation (“**Grasslands**”, collectively the “**Metro Entities**” or the “**Companies**”), pursuant to an order (the “**Receivership Order**”) of the Honourable Madam Justice K.M. Eidsvik of the Court of Queen’s Bench of Alberta (the “**Court**”) dated January 20, 2021 (the “**Date of Appointment**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. Pursuant to the order of the Honourable Justice D.R. Mah of the Court dated March 26, 2021 (the “**Sales Process Order**”), the Receiver was authorized to engage Jones Lang LaSalle Estate Services Inc. (“**JLL**”) and Mr. John Corcoran of Royal Lepage Mission (“**Royal Lepage**”) to offer certain of the Companies’ real estate assets for sale under a marketing and sales process described in the first report of the Receiver dated March 15, 2021 (the “**First Report**”) and apply for an order of the Court approving the sale of the Property and vesting in and to a purchaser all the Receiver’s right, title and interest in and those real estate assets. A copy of the Sales Process Order is attached hereto as **Appendix “B”**.
3. Pursuant to the order of the Honourable Justice D.R. Mah of the Court dated March 26, 2021 (the “**Auction Order**”), the Receiver was authorized to enter into an auction service agreement (the “**Auction Agreement**”) with Corporate Assets Inc. (“**Corporate Assets**”) to conduct an auction for the Companies’ rolling stock, construction equipment, and other smaller equipment/tools/office furniture (collectively, the “**Equipment**”) as outlined in the First Report. A copy of the Auction Order is attached hereto as **Appendix “C”**.
4. Pursuant to the terms of the Receivership Order, the Receiver assigned Metro Roadbuilding into bankruptcy on May 12, 2021. A certificate of appointment evidencing the assignment of Metro Roadbuilding into bankruptcy is attached as **Appendix “D”**.
5. The Receiver filed a report dated May 31, 2021 (the “**Second Report**”) with the Court in support of its application to be heard on June 30, 2021 for advice and direction with respect to the ability of Trevcon Enterprises Ltd. (“**Trevcon**”) and PCL Management Inc. (“**PCL**”) to make certain payments directly to sub-contractors of Metro Roadbuilding, and to set off the amounts of those payments against amounts owing by Trevcon and PCL to Metro Roadbuilding.
6. The Receiver has also prepared and will file with the Court, subject to a request for Sealing Order, a Confidential Supplementary Report dated June 21, 2021 (the “**Confidential Supplement**”), which should be read by the Court in conjunction with this third report of the Receiver (the “**Third Report**”) and which will assist the Court in considering the relief being sought by the Receiver herein.

7. This Third Report and all other court materials and orders issued and filed in these receivership proceedings are available on the Receiver's website <http://www.bdo.ca/en-ca/extranets/metrogroupofcompanies> (the "**Receiver's Website**") and will remain available for a period of six (6) months following the Receiver's discharge.
8. Terms not otherwise defined herein shall have the meaning ascribed to them in the First Report.

## II. PURPOSE OF REPORT

9. The purpose of this Third Report is to:
  - a) Update the Court with certain information pertaining to the receivership proceedings, including:
    - (i) The activities of the Receiver since the First Report;
    - (ii) The Sale Process (defined herein) undertaken by the Receiver in respect of the Metro Paving land and building located at 7615 40 St NE, Calgary, Alberta (the "**Calgary Property**") and the results thereof;
    - (iii) The proposed sale of the Calgary Property to Scorpio Masonry (Northern) Inc. ("**Scorpio**" or the "**Purchaser**");
    - (iv) The Auction Sale (defined herein) undertaken by the Receiver in respect of the Equipment and the results thereof;
    - (v) The Receiver's fees and disbursements and those of the Receiver's legal counsel;
    - (vi) The Receiver's interim statement of receipts and disbursements from the Date of Appointment to June 11, 2021; and
    - (vii) The proposed interim distributions to the Equipment Lessors, Lienholders and Lender (each as defined below) from the net proceeds of sale from the Auction Sale and the sale of the Calgary Property.
  - b) Recommend that this Court make orders:
    - (i) Approving this Third Report and the Confidential Supplement including the actions and activities of the Receiver set out herein;
    - (ii) Approving the agreement of purchase and sale dated June 21, 2021 between the Receiver as vendor and Scorpio as purchaser (the "**Sale Agreement**"), authorizing the Receiver to complete the transaction contemplated by the Sale Agreement (the "**Proposed Transaction**"), and vesting the right, title and interest of Metro Paving in and to the Purchased Assets (as defined in the Sale

Agreement) in Scorpio free and clear of all claims and encumbrances, other than the permitted encumbrances;

- (iii) Approving the fees and disbursements of the Receiver and its legal counsel, as set out in this Third Report;
- (iv) Approving the Receiver's interim statement of receipts and disbursements from the Date of Appointment to June 11, 2021;
- (v) Authorizing and directing the Receiver to make distributions to the Equipment Lessors (herein defined) in the total amount of \$1,578,966 (as more particularly outlined in paragraph 70 of this Third Report) in full and final satisfaction of the claims of the Equipment Lessors;
- (vi) Authorizing and directing the Receiver to make distributions to Lienholders (herein defined) in the total amount of \$42,594 (as more particularly outlined in paragraph 70 of this Third Report) in full and final satisfaction of the claims of the Lienholders;
- (vii) Authorizing and directing the Receiver to make an interim distribution to Bank of Montreal ("**BMO**" or the "**Lender**") in respect of its secured claim against the Property in the amount of \$4,100,000; and
- (viii) Sealing the Confidential Supplement and the appendices thereto.

### III. QUALIFICATIONS

10. In preparing this Third Report, the Receiver has relied upon unaudited financial information, the Companies' books and records, financial information prepared by the Companies and discussions with management (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought herein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, as such, the Receiver expresses no opinion or other form of assurance in respect of the Information.

11. Unless otherwise noted, all monetary amounts contained in this Third Report are expressed in Canadian dollars ("**CAD**").

#### IV. RECEIVER'S ACTIVITIES SINCE THE FIRST REPORT

12. Since the First Report, the Receiver's activities have included:

- a) Reviewing the Companies' books and records;
- b) Engaging in discussions with customers and collecting accounts receivable;
- c) Engaging in discussions with counsel and sending demand letters to certain customers;
- d) Compiling information for Echelon Insurance regarding specific bonded projects;
- e) Coordinating site visits to assess deficiencies on specific projects;
- f) Engaging in discussions with customers regarding outstanding deficiency work and obtaining quotes;
- g) Preparing the Second Report;
- h) Engaging in discussions with counsel regarding the Morrin Bridge and Whistlers Campground projects' bond claims and other issues outlined in the Receiver's Second Report;
- i) Assigning Metro Roadbuilding into bankruptcy on May 12, 2021, as outlined in the Receiver's Second Report;
- j) Corresponding with Canada Revenue Agency ("**CRA**") and compiling documents for GST and payroll account examinations;
- k) Preparing and filing outstanding GST returns for all Metro Entities;
- l) Preparing and filing a Canada Emergency Wage Subsidy (CEWS) claim for Metro Roadbuilding;
- m) Corresponding with former employees regarding T4s and Wage Earner Protection Program claims;
- n) Preparing, reviewing and executing the auction agreement with Corporate Assets;
- o) Engaging in discussions with Jones Lang Lasalle Real Estate Services, Inc. ("**JLL**") and executing the listing agreement for the Calgary Property;
- p) Engaging in discussions with Royal LePage and executing the listing agreement for each of Plan 0915352; Block 2 - Lots 2-36; Block 3 - Lots 1-26 and Block 4 - Lots 1-10 located in the Village of Beiseker, Alberta (the "**Grasslands Property**", Plan 0910625, Block 10 – Lot 4, 9, 11, 15, Hussar, Alberta (the "**Hussar Property**")

and Plan 9711596, Block 2 – Lot 11, Sundre, Alberta (the “**Sundre Property**”, together with the Grasslands Property and Hussar Property, the “**Ancillary Properties**”);

- q) Obtaining quotes and engaging Avison Young Valuation & Advisory Services, LP (“**Avison Young**”) for appraisals of the Calgary Property and Pine Ridge Mountain Resort development property in Invermere, British Columbia (the “**Pine Ridge Property**”);
- r) Obtaining quotes and engaging Environmental Diagnostics Inc. (“**EDI**”) for a Phase I Environmental Site Assessment (“**ESA**”) of the Calgary Property and Sundre Property;
- s) Obtaining quote and engaging EDI for a Phase II ESA of the Calgary Property;
- t) Obtaining quotes and engaging Terramatic Technologies Inc. (“**Terramatic**”) for a real property report of the Calgary Property;
- u) Reviewing documentation provided by Equipment Lessors and Lienholders to determine validity and priority of respective claims;
- v) Coordinating the release of one piece of equipment back to Caterpillar Financial Services Limited (“**CAT**”) by preparing and executing a release agreement;
- w) Engaging in discussions with all Equipment Lessors and finalizing arrangements pertaining to the leased pieces of Equipment;
- x) Reviewing documentation provided by parties claiming ownership to certain pieces of Equipment and issuing correspondence in connection with same;
- y) Corresponding with insurance adjusters with regards to claims for equipment stolen prior to the receivership proceedings;
- z) Engaging in discussions with Corporate Assets, Parks Canada and PCL regarding Metro Par’s asphalt plant equipment;
- aa) Attending the Auction Sale on April 29, 2021;
- bb) Corresponding with Corporate Assets regarding Equipment removals and site clean-up;
- cc) Reviewing and reconciling the Auction Sale results;

- dd) Engaging in discussions with counsel regarding validity and priority of all liens registered under the *Garage Keepers' Lien Act* (“**Garage Keepers' Lien(s)**”) against the Equipment;
- ee) Engaging in discussions with counsel regarding proposed distributions to Equipment Lessors;
- ff) Communicating the Auction Sale results and proposed distributions to all Equipment Lessors and Lienholders;
- gg) Reviewing the Avison Young Calgary Property appraisal with an effective date of March 25, 2021 (the “**Calgary Appraisal**”) and engaging in discussions with Avison Young regarding same;
- hh) Reviewing offers received for the Calgary Property;
- ii) Drafting the purchase and sale agreement for the Calgary Property and engaging in discussions with counsel to Scorpio regarding same;
- jj) Corresponding with Ledcor Construction Limited (“**Ledcor**”, the current tenant of the Calgary Property) regarding the Proposed Transaction;
- kk) Engaging in discussions with EDI and JLL regarding the Phase II ESA results;
- ll) Engaging in discussions with Royal LePage regarding Ancillary Properties’ marketing and sales efforts;
- mm) Preparing a distribution analysis for the real estate development property, Plan 1113152, Block 2 – Lot 1 and Meridian 4 Range 27 Township 12, Section 34, Subdivisions 9 & 16 located in Claresholm, Alberta (the “**SouthCal Property**”) and engaging in discussions with the other shareholders regarding same;
- nn) Reviewing the Avison Young Pine Ridge Property appraisal with an effective date of April 19, 2021 (the “**Pine Ridge Appraisal**”) and engaging in discussions with Avison Young regarding same;
- oo) Corresponding with potential purchasers of the Companies’ interest in the Pine Ridge Property;
- pp) Engaging Burnett, Duckworth & Palmer LLP (“**BD&P**”) as external counsel to provide an independent legal opinion on the Horseshoe Mortgage and Grasslands Mortgage (both herein defined) and reviewing same;
- qq) Engaging in discussions with counsel regarding Horseshoe Contracting Ltd. (“**Horseshoe**”) proposed application to assign Grasslands into bankruptcy and the corresponding adjournment of same;
- rr) Communicating various aspects of the receivership proceedings with BMO and its counsel; and
- ss) Preparing this Third Report and the Confidential Supplement.



## V. SALE PROCESS

13. As outlined in the First Report, the Receiver believes the best course of action to maximize realizations of the Calgary Property and Ancillary Properties is to engage licensed real estate brokers to market and sell the properties (the “**Sale Process**”).
14. Upon the Court’s approval of the Sale Process, the Receiver engaged JLL to list and market the Calgary Property for sale and Royal Lepage to list and market the Ancillary Properties for sale.
15. As of the date of this Third Report, there has been limited interest in the Ancillary Properties. As such, this section of the Third Report will focus on the Sale Process associated with the Calgary Property.

### **Marketing of the Calgary Property**

16. On April 1, 2021, JLL approached the current tenant of the Calgary Property, Ledcor, with the opportunity to purchase the Calgary Property. Ledcor declined to purchase the Calgary Property.
17. JLL began its full marketing campaign for the Calgary Property on April 20, 2021, which included:
- a) Listing the Calgary Property for sale on MLS with a list price of \$4,050,000;
  - b) Creating a designated webpage to advertise the opportunity;
  - c) Designing a marketing brochure for the Calgary Property;
  - d) Sending email blasts to potential purchasers;
  - e) Conducting property tours; and
  - f) Engaging in discussions with potential purchasers.
18. JLL distributed marketing materials directly to approximately 250 potential purchasers.
19. JLL conducted property tours with seven (7) potential purchasers. The last property tour occurred on May 5, 2021. Of the seven potential purchasers who viewed the Calgary Property, three (3) potential purchasers (the “**Bidders**”) submitted non-binding letters of intent (“**LOI(s)**”) within the first two weeks of the marketing period.
20. The initial offers submitted by the Bidders were all within the same price range with similar conditions. As such, the Receiver instructed JLL to engage in further negotiations with all Bidders. The Bidders were asked to re-submit their final and best offers for consideration by May 5, 2021.

21. All Bidders re-submitted LOIs by May 5, 2021 (the “**Final Offer(s)**”), with one (1) LOI (the “**Scorpio LOI**”) containing a purchase price that was materially higher than the others. The second highest LOI (the “**221 Ltd. LOI**”) was submitted by 2212442 Alberta Ltd. (“**221 Ltd.**”).
22. JLL indicated to the Receiver that in their opinion the parties who submitted the Final Offers had provided their final and best offers, that any further offers or negotiations would not materially increase the proposed purchase price for the Calgary Property and that another round of bidding was not warranted in the circumstances. Additionally, JLL (who was also representing 221 Ltd.) advised the Receiver that 221 Ltd. would not be able to submit an offer that would match or exceed the highest offer (*i.e.*, the Scorpio LOI). As such, the Receiver did not proceed with a third round of bidding.

### **Review of Final Offers and Selection of Successful Bidder**

23. To assist in the due diligence process and the Receiver’s analysis of the Final Offers, the Receiver commissioned the following reports with respect to the Calgary Property:
- a) Real property report from Terramatic which was received on May 3, 2021;
  - b) Phase I ESA report from EDI dated and received on May 19, 2021;
  - c) Phase II ESA report from EDI dated and received on June 8, 2021 (the “**Calgary Phase II ESA**”); and
  - d) Real estate appraisal report (the “**Calgary Property Appraisal**”) from Avison Young dated April 21, 2021.
24. Copies of the LOIs, the Calgary Phase II ESA and the Calgary Property Appraisal, including the analysis prepared by the Receiver and certain additional supporting information are contained in Appendices “**A**” to “**C**” of the Confidential Supplement.
25. The Receiver considered the Final Offers, taking into consideration a number of factors including: (a) the purchase price; (b) conditions to closing and certainty of closing; (c) deposit amounts; and (e) the Calgary Property Appraisal.
26. After consideration of the Final Offers and in consultation with JLL and the Lender, Scorpio was identified as the successful bidder. Although the six (6) week minimum marketing period which the Receiver required JLL to canvas the market had not lapsed at the time that the Final Offers were received, the Receiver and JLL believed that any further offers would not be materially better than the Final Offers and agreed that the best course of action was to enter into formal negotiations with Scorpio (who was the leading bidder) while continuing to market the Calgary Property for a limited period of time in order to gauge any additional interest. The Lender was supportive of the Receiver entering into

formal negotiations with Scorpio in light of the Final Offers received. The Receiver also informed Ledcor of the Proposed Transaction.

### **Scorpio Sale Agreement**

27. The Receiver and Scorpio started negotiating the Sale Agreement on May 18, 2021. On June 8, 2021, during the course of the Sale Agreement negotiations with Scorpio, the Receiver received the results of the Calgary Phase II ESA.
28. The results of the Calgary Phase II ESA indicated that heavy hydrocarbons were found in the shallow soils in six (6) areas of the Calgary Property site. The Receiver and JLL discussed the Calgary Phase II ESA results with EDI, who indicated that additional work would be required in order to accurately determine the contaminated areas and associated cost of remediation for the Calgary Property ("**Delineating Process**").
29. EDI also advised that the Delineating Process would take an additional 3-4 weeks to complete and cost approximately \$15K-\$20K. Based solely on the Calgary Phase II ESA, EDI provided an initial estimate of the potential environmental remediation costs ("**Estimated Remediation Costs**") for the Calgary Property, however, without completing the Delineation Process, it is not possible to validate the estimate. Additional details regarding the Estimated Remediation Costs are contained in the Confidential Supplement.
30. One of the conditions contained in the Scorpio LOI was that the Receiver would provide a "clean" Phase II ESA to Scorpio. In light of the results of the Calgary Phase II ESA and the potential environmental remediation that may be required for the Calgary Property, the results of the Calgary Phase II ESA were provided to Scorpio and the Receiver and Scorpio entered into further negotiations. Scorpio ultimately agreed to proceed with the purchase of the Calgary Property on an "as is, where is" basis provided that the purchase price contained in the Scorpio LOI was reduced by approximately 7.5%. The 7.5% reduction in the Scorpio purchase price represents approximately 82% of the Estimated Remediation Costs.
31. Given that the reduction to the purchase price contained in the Scorpio LOI would mean that the purchase price contained in the 221 Ltd. LOI was now higher than the Scorpio LOI, the Receiver went back to JLL to confirm whether the purchase price contained in the 221 Ltd. LOI would also be reduced in light of the results of the Calgary Phase II ESA. JLL advised the Receiver that in light of the results of the Calgary Phase II ESA, 221 Ltd. was no longer interested in proceeding with the purchase price listed in the 221 Ltd. LOI unless the environmental issues identified were remediated.
32. Given the additional time that would be required to perform the Delineating Process and the potential environmental remediation, along with the associated costs, the Receiver determined it would not be practical or cost efficient to perform the Delineating Process and/or seek other potential offers.

33. In light of the foregoing, and in consultation with the Lender, the Receiver and Scorpio proceeded to finalize the Sale Agreement.

34. The key terms of the Sale Agreement are as follows:

- a) The purchase is on an “as is, where is” basis and is subject to approval of this Honourable Court;
- b) The purchaser will pay a \$400,000 deposit within three business days of execution of the Sale Agreement;
- c) The Purchased Assets include the Companies’ interests in and to the Calgary Property, the lease with Ledcor and certain chattels; and
- d) Closing is scheduled to occur on July 7, 2021 or such other date as agreed to by the Receiver and Scorpio in writing.

35. A copy of the redacted Sale Agreement is attached hereto as **Appendix “E”**. An unredacted copy of the Sale Agreement is attached **Appendix “D”** to the Confidential Supplement.

#### **Basis for Receiver’s Recommendation**

36. As noted above, JLL continued to market the Calgary Property for a limited period of time while negotiations were ongoing with Scorpio. The Receiver has been advised that there was minimal interest in the Calgary Property from other potential purchasers between May 5, 2021 and May 18, 2021 and no higher offers have been submitted in relation to the Calgary Property. Notwithstanding the reduction to the purchase price contained in the Scorpio LOI, the purchase price in the Sale Agreement is equal to approximately 99% of the market value contained in the Calgary Appraisal. The market value contained in the Calgary Appraisal also does not reflect any value adjustments for potential environmental issues.

37. The Receiver is satisfied that the Sale Process in relation to the Calgary Property was conducted with integrity, was commercially reasonable, fair and open for the purpose of identifying the best offer available (including price and other factors) for the following reasons:

- a) The direct-contact marketing method of the Sale Process at the outset of the marketing period was sufficient to attract the interest of reasonable buyers and investors;
- b) The timeframe over which the Calgary Property was exposed to the market was sufficient to allow interested buyers and investors to participate in the process. Although the marketing period only lasted a total of four (4) weeks as opposed to the six (6) week process outlined in the First Report, it was determined the risk of

losing Scorpio's superior offer outweighed allowing the marketing process to continue for an additional two (2) weeks;

- c) Additional service providers (EDI, Terramatic, etc.) were engaged to assist with the due diligence process so that buyers and investors, as well as the Receiver, as vendor, could make informed decisions regarding the Calgary Property; and
- d) The Lender and Mr. Ron Friesen were supportive of the process and were consulted regarding offers submitted as part of the Sale Process.

38. The Receiver respectfully requests that this Court issue an order approving the Sale Agreement for the following reasons:

- a) The Purchase Price (as defined in the Sale Agreement) is approximately 99% of the market value contained in the Calgary Appraisal;
- b) The results of the Calgary Phase II ESA outlined above represent a significant deterrent for potential purchasers due to the potential remediation costs associated with the Calgary Property. Under the Sale Agreement, Scorpio is purchasing the Calgary Property on an "as is, where is" basis and is responsible for any and all costs required to remediate the Calgary Property;
- c) JLL has shown the Calgary Property to seven (7) interested parties, only three (3) of whom submitted offers. The Final Offers were submitted prior to the results of the Calgary Phase II ESA and certain Bidders have since indicated that they would not proceed with their Final Offer as submitted unless the Calgary Property is remediated;
- d) The Lender is supportive of the Sale Agreement and the Sale Transaction;
- e) The only substantive condition under the Sale Agreement is Court approval; and
- f) Continuing to market the Calgary Property will not guarantee a higher sale price and will result in the receivership estate continuing to incur holdings costs for items such as insurance, security and monitoring, utilities, maintenance and property taxes. Given the on-going operating losses associated with the Calgary Property (as the Ledcor rent is not sufficient to cover all the costs including property taxes), and the anticipated environmental remediation work required, time is of the essence in order to maximize the value of this transaction. Additionally, continuing the Sales Process would risk losing the current offer in hand.

## **VI. SEALING OF CONFIDENTIAL SUPPLEMENT**

39. The Receiver is seeking a sealing order in respect of the Confidential Supplement as it contains commercially sensitive information, such as the appraised value for the Calgary Property, the Purchase Price under the Sale Agreement and the amounts of the Final Offers. The public disclosure of the commercially sensitive information contained in the Confidential Supplement prior to the closing of the Sale Transaction may adversely impact any future realization attempts for the Calgary Property should the Sale Agreement not close.
40. The Receiver is not aware of any party that will be prejudiced by the sealing of the information contained in the Confidential Supplement.
41. The Receiver is seeking to seal the Confidential Supplement until the earlier of:
  - a) The filing of a Receiver's Closing Certificate indicating that the Sale Transaction has closed;
  - b) The discharge of the Receiver; or
  - c) Further Order of this Honourable Court.

## **VII. AUCTION SALE**

42. Following the Court's approval of the Auction Sale on March 26, 2021, the Receiver engaged Corporate Assets as the auctioneer for the Equipment. Corporate Assets began inspecting the equipment, preparing the auction site, and marketing the Equipment for sale in late March 2021.
43. The Receiver attended the virtual auction, which occurred on April 29, 2021, during which the vast majority of the Equipment was sold.
44. After the completion of the Auction Sale, Corporate Assets continued to market the remaining unsold items and facilitated Equipment removal.
45. The total sale proceeds from the Auction Sale are summarized below:

<b>METRO ENTITIES</b>		
<b>Summary of Auction Sale Proceeds</b>		
<b>Auction Sale Date: April 29, 2021</b>		
Total Auction Sale Proceeds		\$ 2,585,337
Less: Auctioneer's share above net minimum guarantee	<i>Note 1</i>	50,000
Net Auction Sale proceeds available to Receiver		\$ 2,535,337

Note 1: The net minimum guarantee per the auction agreement was set at \$1.86 million.

46. The Receiver in receipt of the net auction sale proceeds (the "**Auction Proceeds**") and the Auction Proceeds are readily available for distribution, subject to Court approval. A significant portion of the Auction Proceeds are distributable to the Equipment Lessors and Lienholders, as further discussed in the Secured Creditors section below.

## **VIII. SECURED CREDITORS**

47. As noted at paragraph 67 of the First Report and paragraph 9 of the Second Report, according to the Companies' books and records, as at the Date of Appointment:

- a) Metro Roadbuilding was indebted to BMO in the amount of approximately \$4.1 million;
- b) Metro Paving was indebted to BMO in the amount of approximately \$2.7 million; and
- c) Grasslands was indebted to BMO in the amount of approximately \$301,000.

48. The Receiver has obtained an independent written legal opinion (the "**Opinion**") from Cassels Brock & Blackwell LLP ("**Cassels**") with respect to the validity and enforceability of the Roadbuilding GSA, the Paving GSA, the Paving Mortgage, the Pars GSA and the Grasslands GSA held by BMO. Subject to the standard assumptions and qualifications, as well as certain additional qualifications contained in the Opinion, Cassels has advised:

- a) BMO holds a valid and enforceable security interest in and to all of the personal property of the Metro Entities defined as "Collateral" in the Roadbuilding GSA, Paving GSA, Pars GSA and Grasslands GSA to which the Personal Property Security Act (Alberta) (the "**PPSA**") applies, which security interest has been properly perfected in Alberta, subject to the potential priority claims listed described in the Opinion and summarized below under the headings "Equipment Lessors" and "Lienholders"; and
- b) The Paving Mortgage held by BMO in the principal amount of \$3.2 million and registered against the Calgary Property creates a first in time financial charge in favour of BMO.

49. As noted at paragraph 69 of the First Report, Cassels did not provide an independent, legal opinion in relation to the Grasslands Mortgage. This is because Grasslands is the mortgagor of a mortgage dated November 1, 2012 with Horseshoe Contracting Ltd., Metro Roadbuilding, and Eclipse Geomatics & Engineering Ltd. as co-mortgagees (the "**Horseshoe Mortgage**"). The Horseshoe Mortgage is registered against title to the Grasslands Property. As Metro Roadbuilding is a co-mortgagee under the Horseshoe Mortgage, it is the view of Cassels and the Receiver that Cassels cannot provide an independent legal opinion in relation to the Horseshoe Mortgage or the Grasslands Mortgage.
50. As such, the Receiver engaged Burnett, Duckworth & Palmer LLP ("**BD&P**") as external counsel to provide an independent legal opinion on the Horseshoe Mortgage and the Grasslands Mortgage (the "**Grasslands Opinion**"). Subject to the standard assumptions and qualifications, BD&P has advised that the Grasslands Mortgage held by BMO in the principal amount of \$3 million and registered against the Grasslands Property is valid and enforceable. Additional developments in relation to the Horseshoe Mortgage are discussed below under the heading "Horseshoe Mortgage".

#### **Equipment Lessors**

51. As outlined in the Receiver's First Report, a significant portion of the large paving/excavation equipment was subject lease agreements with several equipment lessors, including: Essex Lease Financial Corporation ("**Essex**"), Cat, Brandt Finance Ltd./Roynat Inc. ("**Meridian**"), John Deere Financial Inc. ("**John Deere**"), Komatsu International (Canada) Inc. ("**Komatsu**") and Wells Fargo Equipment Finance Company ("**Wells Fargo**", and collectively the "**Equipment Lessors**").
52. Since the First Report, Cassels has completed a review of all lease agreements and other security documents provided by the Equipment Lessors.
53. Prior to the Auction Sale, the Receiver finalized arrangements with all of the Equipment Lessors, which detailed the Equipment that would be included in the Auction Sale and the proposed distribution of any net sale proceeds arising from the sale of the respective Equipment.
54. Subsequent to the Auction Sale, the Receiver notified each of the Equipment Lessors of the Auction Sale results and the proposed distribution in full and final satisfaction of amounts owing to each respective Equipment Lessor. All Equipment Lessors have agreed to a proposed distribution amount and the Receiver intends to seek a distribution order to the Equipment Lessors as detailed in the Proposed Distributions section of this Third Report.



## Lienholders

55. As outlined in the Receiver's First Report, Strongco Limited Partnership and JT Equipment Corp. (collectively, the "**Lienholders**") have registered Garage Keepers' Liens on three (3) pieces of Equipment, which were all sold during the Auction Sale.
56. Cassels completed a review of the documents provided by the Lienholders and determined that the Garage Keepers' Liens were valid.
57. The Receiver notified both of the Lienholders of the Auction Sale results and the proposed distribution in full and final satisfaction of amounts owing to the Lienholders with respect to the Garage Keepers' Liens. Both Lienholders have agreed to a proposed distribution amount and the Receiver intends to seek a distribution order to the Lienholders as detailed in the Proposed Distributions section of this Third Report.

## Horseshoe Mortgage

58. On May 18, 2021, Cassels received a letter from Warnock, Kraft Anderson Lawyers ("**WKA**"), who is counsel to Horseshoe and 875242 Alberta Ltd. ("**875 Ltd.**"), in relation to the Horseshoe Mortgage (the "**May 18 Correspondence**"). In the May 18 Correspondence WKA indicated, among other things, that it was their position that the Horseshoe Mortgage is the first registered mortgage on title to the Grassland Property and that the Horseshoe Mortgage has priority over the Grasslands Mortgage (which is the mortgage registered by BMO against the Grasslands Property). WKA also requested that the Receiver immediately file an application for a bankruptcy order against Grasslands, which could then be adjourned. The purpose of filing the Grasslands bankruptcy application would be to preserve the date of the "initial bankruptcy event" to ensure that creditors are not prejudiced from bringing a potential future proceeding under sections 95 and/or 96 of the BIA in relation to the Grasslands Mortgage.
59. Following discussions between WKA, Cassels and counsel to BMO, the Receiver determined that it was inappropriate for the Receiver to bring the application for a bankruptcy order against Grasslands as there was no clear corresponding benefit to the receivership estate of the Companies. However, the Receiver (through its counsel) advised WKA that the Receiver would consent to lift the stay of proceedings against the receivership estate of the Companies to allow Horseshoe and 875 Ltd. to file a statement of claim and bankruptcy application provided that: (i) any of the Companies listed as defendants in the statement of claim are not required to defend until or unless the Court otherwise Orders them to do so; and (ii) the bankruptcy application is immediately adjourned *sine die*. Additionally, BDO Canada Limited, in its capacity as trustee in bankruptcy of Metro Roadbuilding, also agreed to consent to an Order seeking to lift the stay of proceedings against the bankrupt estate of Metro Roadbuilding to allow Horseshoe and 875 Ltd. to file a statement of claim and bankruptcy application against Metro Roadbuilding on the same conditions as outlined above.

60. On May 26, 2021, WKA filed a statement of claim naming Grasslands of Beiseker Development Corporation, Metro Paving and Roadbuilding Ltd., Ron Friesen, Aaron Badger and Bank of Montreal as defendants (the “**Horseshoe Claim**”). A copy of the Horseshoe Claim is attached as **Appendix “F”**.
61. On May 31, 2021, an Order lifting the stay of proceedings against Metro Roadbuilding was granted and filed. A copy of this Order is attached as **Appendix “G”**.
62. The Receiver understands that no further steps have been taken in relation to the Horseshoe Claim at this time.

## **IX. PROFESSIONAL FEES**

63. The Receiver’s professional fees incurred for services rendered in relation to the receivership proceedings between March 1, 2021 and May 15, 2021 amount to \$118,258, plus disbursements of \$83, for a total of \$118,341 (excluding GST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Receiver’s professionals is detailed in **Appendix “H”** as well as the fee affidavit of Clark Lonergan, sworn June 21, 2021.
64. The fees of the Receiver’s counsel, Cassels, for services rendered in relation to the receivership proceedings between March 1, 2021 and April 30, 2021 amount to \$193,918, plus disbursements of \$3,104, for a total of \$197,022 (excluding GST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by Cassels’ professionals is detailed in **Appendix “I”** as well as the fee affidavit of Jeffrey Oliver, sworn June 21, 2021.
65. The Receiver has reviewed Cassels’ accounts and has determined that the services have been duly authorized and duly rendered and that the charges are fair and reasonable in the circumstances.

## **X. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

66. The Receiver has prepared a statement of receipts and disbursements from the Date of Appointment to June 11, 2021 on a combined basis for all Metro Entities (the “**R&D**”). The Receiver continues to track and record receipts and disbursements separately for each estate. The R&D is summarized as follows:

<b>METRO ENTITIES</b>		
<b>Statement of Receipts and Disbursements</b>		
<b>For the period January 20, 2021 to June 11, 2021</b>		
<b>Receipts</b>		
Accounts receivable collections	\$	417,439
Vehicle sale proceeds		64,548
Net Auction Sale proceeds		2,535,337
Life insurance proceeds		168,662
Rent collected		68,775
Receiver's borrowings		50,000
<b>Total receipts</b>		<b>3,304,761</b>
<b>Disbursements</b>		
Subcontractors		21,659
Insurance		40,870
Security		32,654
IT/software		4,075
Property maintenance		3,944
Property repairs		74,453
Utilities		4,499
Appraisal and real property report		6,630
Equipment transportation		23,689
Receiver's fees		160,471
Receiver's legal fees		106,485
Bank charges and filing fees		532
Bankruptcy estate funding		15,000
<b>Total disbursements</b>		<b>494,961</b>
<b>Excess Receipts over Disbursements</b>	<b>\$</b>	<b>2,809,800</b>

- a) As detailed in the table above, the Receiver had total receipts of approximately \$3.3 million between the Date of Appointment and June 11, 2021. The receipts consist primarily of collection of accounts receivable, the net Auction Sale proceeds, and proceeds from the cash surrender value of the Canada Life Policy.
- b) Total disbursements over the same period were approximately \$495K, the majority of which relate to insurance, property repairs and professional fees paid to the Receiver and the Receiver's counsel.
- c) Total excess receipts over disbursements as of June 11, 2021 was approximately \$2.8 million.

67. The Receiver has approximately \$338K in accrued obligations relating primarily to professional fees and disbursements incurred up to the date of this Third Report.
68. The Receiver does not anticipate that it will require additional financing at this time and seeks to pay a portion of the accrued obligations with cash on hand. The Receiver also seeks to make distributions to certain secured creditors as outlined in the Proposed Distributions section below.

## XI. PROPOSED DISTRIBUTIONS

69. As outlined in the Secured Creditors section of this Third Report, the Receiver has proposed distributions to the Equipment Lessors and Lienholders, which are subject to Court approval.
70. The proposed distribution amount to the Equipment Lessors totals \$1,578,966 and the proposed distribution amount to the Lienholders totals \$42,594, for a total of \$1,621,560 ("**Proposed Distribution(s)**"). Subject to the approval of the Court, the Receiver intends to pay the Proposed Distributions using the net proceeds from the Auction Sale to the respective Equipment Lessors and Lienholders, as follows:

<b>METRO ENTITIES</b>	
<b>Breakdown of Proposed Distributions</b>	
<b>Equipment Lessors</b>	
Cat	202,122
Essex	747,657
John Deere	16,974
Komatsu	270,000
Meridian	51,810
Wells Fargo	290,403
	\$ 1,578,966
<b>Lienholders</b>	
JT	24,825
Strongco	17,769
	\$ 42,594
<b>Total</b>	<b>\$ 1,621,560</b>

71. In addition to the Proposed Distribution, the Receiver recommends that an interim distribution is made to BMO, subject to this Court's approval. The Receiver recommends that a total of \$4,100,000 is paid from the net proceeds of the Proposed Transaction, the Auction Sale and other realizations to date ("**Interim Distribution**"). As outlined in the Confidential Supplement, following the Interim Distribution, the Receiver will hold sufficient funds as a reserve to satisfy the payment of estimated priority payables and anticipated outstanding disbursements. The Receiver anticipates that

the reserve is sufficient to pay for estimated priority payables as of the date of this Third Report, which include potential deemed trust claims under the *Builders' Lien Act* of approximately \$20K and source deductions outstanding to CRA of approximately \$30K.

## **XII. RECOMMENDATIONS**

72. Based on the foregoing, the Receiver respectfully recommends that the Court issue an order(s):

- a) Approving the Third Report and the actions, activities and conduct of Receiver set out therein;
- b) Approving the Sale Agreement and the Proposed Transaction;
- c) Approving the Receiver's statement of receipts and disbursements from the Date of Appointment to June 11, 2021;
- d) Approving the accounts of the Receiver and its counsel, Cassels, as set out in this Third Report;
- e) Authorizing and directing the Receiver to pay the Proposed Distribution to the Equipment Lessors with respect to their secured claim against certain pieces of the Equipment in the amount of \$1,578,966;
- f) Authorizing and directing the Receiver to pay the Proposed Distribution to the Lienholders with respect to the Garage Keepers' Liens registered against certain pieces of the Equipment in the amount of \$42,594;
- g) Approving the Interim Distribution to BMO in respect of its secured claim against the Property in the amount of \$4,100,000; and
- h) Approving the sealing of the Confidential Supplement to the Third Report and the appendices annexed thereto.

All of which is respectfully submitted on the 21<sup>st</sup> day of June, 2021.

**BDO Canada Limited in its capacity as Court-Appointed Receiver of the current and future assets, undertakings and properties of METRO PAVING AND ROADBUILDING LTD., METRO PAVING LTD., METRO PARS CORPORATION, and GRASSLANDS OF BEISEKER DEVELOPMENT CORPORATION and not in its personal or corporate capacity**

A handwritten signature in black ink, appearing to read "Clark Lonergan", written over a vertical line.

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**Clark Lonergan, CPA, CA, CIRP, LIT**  
Senior Vice-President

**APPENDIX A –  
Consent Receivership Order (Torys), filed  
February 2, 2021**

Clerk's Stamp:



COURT FILE NUMBER  
COURT

2101 00809

COURT OF QUEEN'S BENCH OF ALBERTA COM Jan 20 2021  
201060

JUDICIAL CENTRE OF

CALGARY

APPLICANT:

BANK OF MONTREAL

RESPONDENTS:

METRO PAVING AND ROADBUILDING LTD.,  
METRO PAVING LTD., METRO PARS  
CORPORATION and GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION

DOCUMENT

**CONSENT RECEIVERSHIP ORDER**

CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT:

Torys LLP  
4600 Eighth Avenue Place East  
525 - Eighth Ave SW  
Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
Telephone: + 1 403.776.3744  
Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 01405-7287

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

January 20, 2021

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

Madam Justice K.M. Eidsvik

**LOCATION OF HEARING:**

Calgary, Alberta



**UPON** the application (the “**Application**”) of the Bank of Montreal (the “**Bank**”) in respect of Metro Paving and Roadbuilding Ltd., Metro Paving Ltd., Metro Pars Corporation and Grasslands of Beiseker Development Corporation (collectively, the “**Debtors**”, and individually, a “**Debtor**”); **AND UPON** having read the Application, the Affidavit of Michelle Madrigga dated January 18, filed; and the Affidavit of Service to be filed, filed; **AND UPON** reading the consent of BDO Canada Limited (“**BDO**”) to act as receiver and manager (the “**Receiver**”) of the Debtors, filed; **AND UPON** hearing counsel for the Bank, the Debtors, and any other interested parties that may be present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

### **SERVICE**

1. The time for service of the Application for this order (the “**Order**”) is hereby abridged and service thereof is deemed good and sufficient.

### **APPOINTMENT**

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and sections 13(2) of the *Judicature Act*, RSA 2000, c J-2, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7, BDO is hereby appointed receiver and manager (“**Receiver**”), without security, of all of the Debtors' respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

### **RECEIVER'S POWERS**

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business,

cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to direct the Registrar of Land Titles of Alberta, or any other similar governmental authority, to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;
- (p) to 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, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;

- (s) to assign any or all of the Debtors into bankruptcy or obtain a bankruptcy order in respect of any or all of the Debtors, if the Receiver determines that is appropriate and in the best interests of the estate; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtors, (ii) all of their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver 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 Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for

the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court, tribunal or regulatory body (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of each of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of any of the Debtors or an action, suit or proceeding that is taken in respect of any of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. **"Regulatory Body"** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

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

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of each of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and

operating agreement, joint venture agreement or any such similar agreement or agreements to which the Debtors is a party that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Debtors, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no circumstances shall the Debtors be replaced as operator pursuant to any such agreements without further order of this Court provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall:

- (a) empower any of the Debtors to carry on any business that the subject Debtor is not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Debtors, without the written consent of the Receiver, or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtors, 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 Debtors

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors 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 usual prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the normal payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

### **EMPLOYEES**

14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the subject Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 ("**WEPPA**").
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such

information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver 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 Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - 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 Receiver, if the order is in effect when the Receiver is appointed, by,



- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver 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 Receiver 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.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000.00, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

21. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000.00 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

## ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

## GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. Any reports of the Receiver shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. 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.
32. The Bank shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Bank's security or, if not so provided by the Bank's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

**FILING**


34. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.bdo.ca/en-ca/extranets/MetroGroupOfCompanies> (the “**Receiver’s Website**”) and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
35. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver’s Website
- and service on any other person is hereby dispensed with.
36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



\_\_\_\_\_  
Justice of the Court of Queen’s Bench of Alberta

**CONSENTED TO BY:**

**FIELD LAW**

Per:   
\_\_\_\_\_  
Trevor Batty  
Counsel to Metro Paving and  
Roadbuilding Ltd., Metro Paving Ltd.,  
Metro Pars Corporation and  
Grasslands of Beiseker Development  
Corporation

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Metro Paving and Roadbuilding Ltd., Metro Paving Ltd., Metro Pars Corporation and Grasslands of Beiseker Development Corporation, appointed by Order of the Court of Queen's Bench of Alberta (the "**Court**") dated the 20<sup>th</sup> day of January, 2021 (the "**Order**") made in action number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the ● day of each month**] after the date hereof at a notional rate per annum equal to the rate of [**●**] per cent above the prime commercial lending rate of Bank of Montreal from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at 350 – 7 Avenue SW, 2nd Floor Calgary, AB T2P 3N9.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

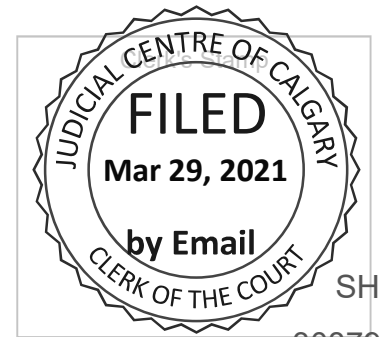
DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BDO CANADA LIMITED**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

**APPENDIX B –  
Order Approving Sales Process, et al (Cassels),  
filed March 29, 2021**

COURT FILE NO.: 2101-00809  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF BANK OF MONTREAL  
DEFENDANTS METRO PAVING AND ROADBUILDING LTD., METRO PAVING LTD.,  
METRO PARS CORPORATION and GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION



30879

DOCUMENT **ORDER APPROVING SALES PROCESS, ACTIONS OF RECEIVER,  
ETC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5  
Telephone: (403) 351-2921  
Facsimile: (403) 648-1151  
Email: joliver@cassels.com / dmarechal@cassels.com  
File No.: 28677-31

**Attention: Jeffrey Oliver / Danielle Marechal**

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 26, 2021  
**NAME OF JUSTICE WHO MADE THIS ORDER:** Justice D.R. Mah  
**LOCATION OF HEARING:** Edmonton, Alberta

**UPON THE APPLICATION OF** BDO Canada Limited, in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of Metro Paving and Roadbuilding Ltd. (“**Roadbuilding**”), Metro Paving Ltd. (“**Paving**”), Metro Pars Corporation (“**Pars**”) and Grasslands of Beiseker Development Corporation (“**Grasslands**” and together with Roadbuilding and Pars, the “**Companies**”) for an Order, among other things, (i) approving of the conduct and activities of the Receiver; (ii) approving the Receiver’s interim statements of receipts and disbursements; (iii) approving the professional fees and disbursements; and (v) approving the proposed marketing and sale of certain of the Companies’ real estate assets on terms substantially similar to the listing proposals submitted by Jones Lang LaSalle Real Estate Services Inc. (“**JLL**”) and Mr. John Corcoran of Royal LePage Mission (“**Royal Lepage**”); **AND UPON HAVING** read the Receivership Order pronounced on January 20, 2021, the First Report of the Receiver dated March 15, 2021 (the “**Report**”), the Confidential

Supplement to the Report dated March 15, 2021 (the “**Confidential Supplement**”) and the Affidavit of Service of Richard Kay, sworn March 24, 2021; **AND UPON HEARING** counsel for the Receiver, counsel to the Bank of Montreal and all other interested parties present;

**IT IS HEREBY ORDERED THAT:**

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. Terms not otherwise defined herein shall have the meaning ascribed to them in the Report.

Approval of Sales Process

3. The Sales Process is hereby approved, and the Receiver is authorized but not obliged to enter into listing agreements with each of JLL and Royal LePage on terms that are substantially similar to those contained in the Appendices “G” and “H” to the Confidential Supplement.
4. The Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Sales Process and do all things as are reasonably necessary to conduct and give full effect to the Sales Process and carry out its obligations thereunder.

Actions of the Receiver

5. The Receiver’s activities as set out in the Receiver’s Report and Confidential Supplement, including without limitation the Statement of Receipts and Disbursements as attached to the Receiver’s Report, are hereby ratified and approved.

Approval of Professional Fees

6. The Receiver’s accounts for fees and disbursements for the period of January 12, 2021 to February 28, 2021, as set out in the Receiver’s Report are hereby approved without the necessity of a formal assessment of its accounts.
7. The accounts of the Receiver’s legal counsel, Cassels Brock & Blackwell LLP, for its fees and disbursements for the period of January 13, 2021 to February 28, 2021, as set out in the Receiver’s Report are hereby approved without the necessity of a formal assessment of its accounts.

Service



8. Service of this order shall be deemed good and sufficient by serving same on the persons listed on the service list in these proceedings and by posting a copy of it on the Receiver's website at: <http://www.bdo.ca/en-ca/extranets/metrogroupofcompanies>.
9. Service of this order on any party not listed on the service list for this application is hereby dispensed with.



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J.C.Q.B.A

**APPENDIX C –  
Order Approving Auction Agreement (Cassels),  
filed March 29, 2021**

COURT FILE NO.: 2101-00809  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF BANK OF MONTREAL  
DEFENDANTS METRO PAVING AND ROADBUILDING LTD., METRO PAVING LTD.,  
METRO PARS CORPORATION and GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION



DOCUMENT **ORDER APPROVING AUCTION AGREEMENT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5  
Telephone: (403) 351-2921  
Facsimile: (403) 648-1151  
Email: [joliver@cassels.com](mailto:joliver@cassels.com) / [dmarechal@cassels.com](mailto:dmarechal@cassels.com)  
File No.: 28677-31

**Attention: Jeffrey Oliver / Danielle Marechal**

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 26, 2021  
**NAME OF JUSTICE WHO MADE THIS ORDER:** Justice D.R. Mah  
**LOCATION OF HEARING:** Edmonton, Alberta

**UPON THE APPLICATION OF** BDO Canada Limited, in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the assets, undertakings and properties of Metro Paving and Roadbuilding Ltd. ("**Roadbuilding**"), Metro Paving Ltd. ("**Paving**"), Metro Pars Corporation ("**Pars**") and Grasslands of Beiseker Development Corporation ("**Grasslands**" and together with Roadbuilding and Pars, the "**Companies**") for an Order, among other things, (i) authorizing the Receiver to enter into an auction services agreement (the "**Auction Agreement**") with Corporate Assets Inc. (the "**Auctioneer**") on terms that are substantially similar to the auction proposal submitted by the Auctioneer on February 19, 2021 (the "**Auction Proposal**"); and (ii) authorizing the Auctioneer to conduct an auction in accordance with terms substantially similar to the Auction Proposal (the "**Auction**"); **AND UPON HAVING** read the Receivership Order pronounced on January 20, 2021, the First Report of the Receiver dated March 15, 2021 (the "**Report**"), the Confidential Supplement to the Report dated March 15, 2021 (the "**Confidential**

**Supplement**") and the Affidavit of Service of Richard Kay, sworn March 24, 2021; **AND UPON HEARING** counsel for the Receiver, counsel to the Bank of Montreal and all other interested parties present;

**IT IS HEREBY ORDERED THAT:**

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Approval of Auction Agreement

2. The Receiver is hereby authorized but not obliged to enter into the Auction Agreement on terms that are substantially similar to those contained in the Auction Proposal.
3. 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 Auction.
4. Upon:
  - (a) the Auctioneer completing a sale to a purchaser (each a "**Purchaser**") at the Auction of the Companies' property (each a "**Purchased Asset**");
  - (b) receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction; and
  - (c) delivery by the Auctioneer to such Purchaser of a bill of sale or similar evidence of purchase and sale (each, a "**Purchaser's Bill of Sale**"),

(each an "**Auction Transaction**" and collectively, the "**Auction Transactions**")

all of the Companies' right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser's Bill of Sale shall vest absolutely in the name of such Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Receivership Order; and

- (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, RSA 2000, c P-7 or any other personal property registry system;

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.

5. From and after the closing of each of the Auction Transactions (including the payment of the purchase price by the Purchaser to the Auctioneer), the Receiver or the Auctioneer are authorized to discharge from the Personal Property Registry any claim registered against any of the personal property being purchased by the Purchaser, to the extent the security interest is registered against the interest of the Companies.
6. Upon the completion of all of the Auction Transactions to the satisfaction of the Receiver, the Receiver shall file a certificate substantially in the form attached hereto as Schedule "A" certifying that the Auction Transactions have closed.
7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets at the Auction (to be held in a trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Purchaser's Bill of Sale 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 their sale at Auction, 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. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.
8. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Auction Transaction, have no liability of any kind whatsoever in respect of any Claims against the Companies.
9. The Companies and all persons who claim by, through or under the Companies in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right,

title, estate, interest, royalty, rental, equity or other Claim whatsoever in respect of or to the Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchases Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser (or its nominee) shall be entitled to enter into and upon and/or hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Companies, or any person claiming by or through or against the Companies.

Miscellaneous Matters

11. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**") in respect of the Companies and any bankruptcy order issued pursuant to such applications;
  - (c) any assignment in bankruptcy made in respect of the Companies; and
  - (d) the provisions of any federal statute:

the vesting of each of the Purchased Assets in its respective Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Auction Transactions.
13. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms

of this Order, to give effect to this Order and to assist 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 the 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.

14. Service of this order shall be deemed good and sufficient by serving same on the persons listed on the service list in these proceedings and by posting a copy of it on the Receiver's website at: <http://www.bdo.ca/en-ca/extranets/metrogroupofcompanies>.
15. Service of this order on any party not listed on the service list for this application is hereby dispensed with.



---

J.C.Q.B.A

**APPENDIX D –  
Metro – Certificate of Appointment**





Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

District of: Alberta  
Division No.: 02 - Calgary  
Court No.: 25-2736990  
Estate No.: 25-2736990

In the Matter of the Bankruptcy of:

**Metro Paving & Roadbuilding Ltd.**

Debtor

**BDO CANADA LIMITED / BDO CANADA LIMITÉE**

Licensed Insolvency Trustee

Ordinary Administration

---

Date and time of bankruptcy:	May 12, 2021, 16:11	Security:	\$0.00
Date of trustee appointment:	May 12, 2021		
Meeting of creditors:	May 31, 2021, 13:00 Meeting to be conducted via Conference Telephone ., Alberta Canada,		
Chair:	Trustee		

CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: May 12, 2021, 18:23

E-File/Dépôt Electronique

Official Receiver

Harry Hays Building, 220 - 4th Ave SE, Suite 478, Calgary, Alberta, Canada, T2G4X3, (877)376-9902

Canada

**APPENDIX E –  
Sale Agreement between Receiver and Scorpio  
(Redacted)**

**PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**BDO CANADA LIMITED**

solely in its capacity as Court-appointed receiver of the property,  
assets and undertakings of Metro Paving Ltd., and not in its  
corporate or personal capacity

- and -

**SCORPIO MASONRY (NORTHERN) INC.**

Dated: June 21, 2021

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## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT** is made as of the 21 day of June, 2021.

**BETWEEN:**

**BDO CANADA LIMITED**

solely in its capacity as court-appointed receiver of all property, assets and undertakings of Metro Paving Ltd. and not in its corporate or personal capacity

(the “**Receiver**”)

- and -

**SCORPIO MASONRY (NORTHERN) INC.**

(the “**Purchaser**”)

**WHEREAS** pursuant to an order of the Court of Queen’s Bench of Alberta (the “**Court**”) issued on January 20, 2021 (the “**Receivership Order**”), the Receiver was appointed as the court-appointed receiver of all of the assets, undertakings and properties (the “**Property**”) of Metro Paving Ltd. (the “**Company**”);

**AND WHEREAS** pursuant to paragraph 3(k) of the Receivership Order and an order of the Court issued on March 26, 2021, the Receiver is authorized to offer the Purchased Assets (as defined hereafter) for sale under a marketing and sales process established in the First Report of the Receiver dated March 15, 2021, and to apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Receiver’s right, title and interest in and to the Purchased Assets, subject to any permitted encumbrances;

**AND WHEREAS** the Purchaser wishes to purchase, and the Receiver wishes to sell, the Purchased Assets upon the terms and subject to the conditions set out herein;

**NOW THEREFORE**, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

### ARTICLE 1 DEFINED TERMS

#### 1.1 Definitions.

In this Agreement:

“**Agreement**” means this purchase and sale agreement, including all schedules and all amendments or restatements, as permitted, and references to “**article**”, “**section**” or “**schedule**” mean the

specified article, section of, or schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule ‘A’ hereto;

“**Assumed Obligations**” has the meaning given in section 3.2 hereof;

“**Business Day**” means a day on which banks are open for business in the City of Calgary but does not include a Saturday, Sunday or statutory holiday in the Province of Alberta;

“**Chattels**” means the chattels, furniture, furnishings, equipment and machinery described in Schedule ‘B’;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means July 7, 2021 or such other date as agreed to in writing by the Parties;

“**Closing Time**” means 2:00 p.m. (Mountain Time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Court**” has the meaning set out in the recitals hereof;

“**Company**” has the meaning set out in the recitals hereof;

“**Deposit**” has the meaning given in section 4.2 hereof;

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;



“**Environmental Results**” means the Phase II Environmental Site Assessment from Environmental Diagnostics Inc., dated the \_\_ day of June, 2021.

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“**Governmental Authority**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**GST**” means goods and services tax imposed under Part IX of the ETA;

“**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**Lands**” means all of the lands and premises municipally described as 7615-40 St NE, Calgary, Alberta and legally described in Schedule ‘C’ hereto;

“**Lease**” means the lease dated May of 2018, between the Company, as landlord, and Leducor Construction Limited, as tenant, as it relates to those certain premises relating to that portion of the Lands, as further set out in the Lease, to the extent that the Lease has not been terminated by the tenant thereunder on or before the Closing Date. For clarity, the Receiver shall not take any steps to enforce the landlord's right pursuant to the Lease during the Interim Period, unless the Receiver shall first have obtained the Purchaser prior written consent;

“**Notice**” has the meaning set out in section 15.3 hereof;

“**Parties**” means the Receiver and the Purchaser and “**Party**” shall mean either one of them;

“**Permitted Encumbrances**” means all those Encumbrances described in Schedule ‘D’ hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Property**” has the meaning set out in the recitals hereof;

“**Purchase Price**” has the meaning set out in section 4.1 hereof;

“**Purchased Assets**” means all of the Receiver’s and the Company’s right, title and interest in and to the following assets:

- (a) the Lands;
- (b) the Lease; and
- (c) the Chattels;

“**Purchaser**” means Scorpio Masonry (Northern) Inc. a corporation duly formed and validly subsisting under the laws of Alberta;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Taxes**” means all GST and land transfer taxes together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement;

“**Transaction Documents**” means this Agreement and the other agreements, instruments, and documents required to be delivered at the Closing; and

## **ARTICLE 2 SCHEDULES**

### **2.1 Schedules.**

The following schedules are incorporated in and form part of this Agreement:

<u><b>Schedule</b></u>	<u><b>Description</b></u>
Schedule ‘A’	Form of Draft Approval and Vesting Order
Schedule ‘B’	Chattels
Schedule ‘C’	Legal Description of Lands
Schedule ‘D’	Permitted Encumbrances

## **ARTICLE 3 AGREEMENT TO PURCHASE**

### **3.1 Purchase and Sale of Purchased Assets.**

Upon and subject to the provisions hereof, the Receiver agrees to sell the Purchased Assets to the Purchaser, and the Purchaser agrees to purchase the Purchased Assets from the Receiver, in each case at the Closing Time, subject only to the Permitted Encumbrances.

### **3.2 Assumed Obligations.**

On the terms and subject to the conditions set forth in this Agreement, the Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, the following liabilities and obligations of the Company and the Receiver, as applicable, with respect to the Purchased Assets (collectively, the “**Assumed Obligations**”):

- (a) all liabilities and obligations arising under or relating to the Lease; and,
- (b) all other liabilities and obligations arising out of or relating to the Purchaser’s ownership or operation of the Purchased Assets on or after the Closing.

## **ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

### **4.1 Purchase Price.**

The purchase price for the Purchased Assets shall be the aggregate of \$ \_\_\_\_\_, plus the assumption of the Assumed Obligations (the “**Purchase Price**”), subject to any adjustments contemplated herein.

### **4.2 Deposit.**

Within three (3) Business Days of execution of this Agreement, the Purchaser shall pay to Receiver a deposit equal to \$400,000 (the “**Deposit**”) in immediately available funds, which shall be held in trust pending the closing of the Transaction. Subject only to Article 14, the Initial Deposit shall be non-refundable and releasable to the Receiver on Closing.

### **4.3 Satisfaction of Purchase Price.**

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price on Closing; and
- (b) the balance shall be paid by the Purchaser to the Receiver on Closing, being the net amount owing after deducting the Deposit from the Purchase Price and subject to the adjustments contemplated in section 4.5 below.

### **4.4 Allocation of Purchase Price.**

The Purchase Price shall be allocated among the Purchased Assets in a manner to be agreed upon by the Parties prior to the Closing Time, acting reasonably, provided that failure to reach such agreement shall not affect or delay Closing and in the event of such failure the parties shall be free to allocate the Purchase Price as each party sees fit.

### **4.5 Adjustment of Purchase Price.**

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes, utilities,

monthly rental payments received by the Receiver under the Lease (adjusted *pro rata*) and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale.

- (2) Other than as provided for in this Article, there shall be no adjustments to the Purchase Price.

## **ARTICLE 5 TAXES**

### **5.1 Taxes.**

- (1) The Purchaser is completely and solely liable and responsible for the full payment of all Taxes in respect to the purchase and sale of the Purchased Assets.
- (2) The Purchaser hereby agrees to indemnify and hold the Receiver harmless from and against all Claims in connection with the payment of any Taxes under this Agreement and in respect of the Transaction, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.

## **ARTICLE 6 CLOSING ARRANGEMENTS**

### **6.1 Closing.**

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's solicitors, Cassels Brock & Blackwell LLP, located in Calgary, Alberta, or on such other time and at such other place as the Parties may agree in writing.

### **6.2 Tender.**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective solicitors, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. All documents, monies and other items required to be delivered on or before the Completion Date shall be delivered to the Receiver's solicitors and the Purchaser's solicitors in trust pursuant to reasonable conditions consistent with this Agreement and as are standard for similar real estate transactions in the Province of Alberta, provided that the Purchaser agrees to obtain, at its sole cost, a gap-only policy of title insurance in order to avoid any delays to Closing caused by registration at the Land Titles office or any other public office.

### **6.3 Receiver's Closing Deliverables.**

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;

- (2) a statement of adjustments prepared in accordance with section 4.5 hereof, to be delivered not less than five Business Days prior to Closing;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time;
- (4) a certificate from the Receiver certifying that: (i) the Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date; (ii) the conditions to Closing as set out in this 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.
- (5) an assignment and assumption of the Lease, along with a notice directing rents to be paid thereunder to the Purchaser; and
- (6) such further documentation relating to the completion of the Transaction as reasonably requested by the Purchaser or shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

#### **6.4 Purchaser's Closing Deliverables.**

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time;
- (3) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time in all material respects, with the same effect as though made on and as of the Closing Time (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (4) payment of applicable Taxes with the Purchase Price to the Receiver or, if applicable, (i) a certificate of the Purchaser setting out the registration number of the Purchaser for GST purposes; and (ii) an undertaking by the Purchaser to pay all applicable GST in connection with the Transaction contemplated by this Agreement and an indemnity, in the form prepared by the Receiver or is solicitors, by the Purchaser whereby the Purchaser agrees to indemnify and hold the Receiver harmless from and against any and all Claims that may be suffered or incurred, directly or indirectly, by the Receiver or Company or may become payable by the Receiver or Company arising from or in respect of any failure by the Purchaser to register for the purposes of the GST imposed

under the ETA or to perform its obligations under the ETA in connection with the Transaction contemplated by this Agreement;

- (5) an assignment and assumption of the Lease; and
- (6) such further documentation relating to the completion of the Transaction as reasonably required by the Receiver or shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

## **ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING**

### **7.1 Conditions in Favour of the Receiver.**

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct on the Closing Date in all material respects (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Purchaser;
- (3) the Purchaser shall have complied in all material respects with all the terms and conditions contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (4) the Purchaser shall have paid to the Receiver all amounts required to be paid by it under this Agreement;
- (5) no person entitled by law to do so shall have redeemed the Purchased Assets and no part of the Purchased Assets shall have been removed from the control or possession of the Receiver by any means or process;
- (6) all consents or approvals from or notifications to any lender, tenant or other third parties required under the terms of any agreement, lease or instrument in connection with the completion of the Transaction will have been duly obtained or given, as the case may be;
- (7) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper, that has not at the Closing Date been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal; and

- (8) the Court shall have issued the Approval and Vesting Order and such Approval and Vesting Order shall be final and binding and all appeal periods, if any, in relation thereto having expired without any appeals being filed.

## **7.2 Conditions in Favour of Receiver Not Fulfilled.**

If any of the conditions contained in section 7.1 hereof are not fulfilled on or prior to the Closing Date, then the Receiver may, at its sole discretion:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Parties shall be released from their obligations under this Agreement, and in the case of non-fulfilment of the conditions contained within sections 7.1(1), (2), (3) or (4) the Receiver shall be entitled to retain the Deposit, and in the case of non-fulfilment of any other of the conditions contained within section 7.1, the Receiver shall immediately return the Deposit to the Purchaser; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfilment of any other condition.

## **7.3 Conditions in Favour of the Purchaser.**

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (2) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Receiver;
- (3) the Receiver shall have complied in all material respects with all the terms and conditions contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (4) no person entitled by law to do so shall have redeemed the Purchased Assets and no part of the Purchased Assets shall have been removed from the control or possession of the Receiver by any means or process;
- (5) all consents or approvals from or notifications to any lender or other third parties required under the terms of any agreement, lease or instrument in connection with the completion of the Transaction will have been duly obtained or given, as the case may be;
- (6) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper,

that has not at the Closing Date been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal; and

- (7) the Court shall have issued the Approval and Vesting Order and such Approval and Vesting Order shall be final and binding and all appeal periods, if any, in relation thereto having expired without any appeals being filed.

#### **7.4 Conditions in Favour of Purchaser Not Fulfilled.**

If any of the conditions contained in section 7.3 hereof are not fulfilled on or prior to the Closing Date, then the Purchaser may, in its sole discretion:

- (a) terminate this Agreement by notice to the Receiver, in which event the Parties shall be released from their obligations under this Agreement, subject to the Deposit being returned to the Purchaser; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

### **ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has been duly appointed as the receiver of the Purchased Assets, and, subject to pronouncement of the Approval and Vesting Order, has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Company in and to the Purchased Assets; and
- (2) the Receiver is not a non-resident of Canada for the purposes of the ITA.

### **ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of Alberta;
- (2) the Purchaser has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a



court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

## **ARTICLE 10 COVENANTS**

### **10.1 Purchaser Covenants.**

The Purchaser hereby covenants and agrees that, from the date hereof until Closing, the Purchaser shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement.

## **ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING**

### **11.1 Possession of Purchased Assets.**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take vacant possession of the Purchased Assets where situated (subject only to the rights of those holding the Permitted Encumbrances, including the tenant pursuant to the Lease). The Purchaser acknowledges that the Receiver has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order and Sections 7.1 and 7.3 hereof have been satisfied or waived by the appropriate Party and the appropriate Party has satisfied or waived all the delivery requirements outlined in Sections 6.3 and 6.4 hereof.

### **11.2 Examination of Title and Access to Assets.**

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Lands, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Lands may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding

any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding work orders, deficiency notices or order to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title.

- (2) The Purchaser and its agents and representatives may have reasonable access to the Purchased Assets (with the prior written consent of the Receiver, not to be unreasonably withheld) during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Purchased Assets as it deems appropriate, provided that such inspections shall not unduly interfere (and the Purchaser undertakes to use its best efforts, which the Purchaser represents and warrants shall not be less than reasonable commercial efforts, not to so interfere) with the use, operation and enjoyment of the Purchased Assets by the Receiver or the tenant or any person entitled to access the Lands under the Lease. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Purchased Assets to the condition same were in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Purchased Assets conducted by the Purchaser or its authorized representatives, as outlined above, or as a result of any unauthorized tests or inspections by Government Authorities. This section 11.2(3) shall survive any termination of this Agreement and shall survive Closing.

### **11.3 Risk.**

The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction by written notice received by the Receiver. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically, and the Receiver shall immediately return the Deposit to the Purchaser. If the Purchaser does not exercise such option by delivering written notice to the Receiver prior to the Closing Date, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an

assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit, but exclusive of any Assumed Obligations).

## **ARTICLE 12 AS IS, WHERE IS**

### **12.1 Condition of the Purchased Assets.**

The Purchaser acknowledges that the Receiver is selling, and the Purchaser is purchasing, the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Company has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental state or compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Alberta), do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

### **12.2 Environmental Condition of the Purchased Assets.**

Without limiting the generality of the foregoing section 12.1, the Purchaser acknowledges and agrees that:

- (1) all materials or information in relation to the Purchased Assets provided to the Purchaser by the Receiver or any person on behalf of the Receiver (the “**Materials**”), (including, without restriction, the Environmental Results) are submitted to the Purchaser for informational purposes only and the Receiver does not and shall not make any representation or warranty whatsoever as to the accuracy of the information contained in the Materials, the completeness of the Materials, or the environmental or any other condition of the Purchased Assets and, in the absence of a reliance letter, the Purchaser shall not be entitled to rely on any reports contained in the Materials;
- (2) notwithstanding the delivery of the Materials to the Purchaser, the Purchaser has relied and will rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets, including the physical and environmental condition of the Purchased Assets, and has relied and will rely solely upon its own judgement resulting

therefrom and has not relied on any information, written or oral, furnished by the Receiver or any other person or entities on behalf of or at the direction of the Receiver;

- (3) except as expressly contemplated in sections 6.3(6) and 11.3 of this Agreement, the Receiver shall have no obligations or responsibility to the Purchaser after closing with respect to any matter relating to the Purchased Assets or the condition thereof, including, without restriction, the physical and environmental condition of the Purchased Assets and compliance with any and all Applicable Laws;
- (4) the Purchaser shall assume full responsibility for the Purchased Assets on the Closing Date and hereby remises, releases and forever discharges the Receiver and the solicitors and agents of the Receiver of and from any and all Claims which the Purchaser has now or may hereafter have or may hereafter bring against the Receiver by reason of, arising from or relating to the condition, including, without restriction, the environmental condition of the Purchased Assets or their state of compliance with Applicable Laws.

## **ARTICLE 13 RECEIVERSHIP PROVISIONS**

### **13.1 Court Approval of Agreement**

The Purchaser acknowledges that:

- (1) The Receiver is the Court appointed receiver and manager of all of the assets, undertakings and properties of the Company and is not in its personal capacity the owner of the Purchased Assets and is selling the same pursuant to the Receivership Order.
- (2) The Receiver is entering into this Agreement solely in its capacity as the Receiver and the Receiver shall not incur personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of its entering into this Agreement or performing or failing to perform any of its obligations hereunder. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as receiver of the undertakings, properties and assets of the Company and shall not apply to its personal property and other assets held by it in any other capacity. The term "Receiver" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.
- (3) The Purchaser acknowledges and agrees that until this Agreement is approved by the Court in the Court Action Number 2101-00809, the Receiver's obligations in connection with this Agreement are limited to considering it and, if accepted by the Receiver, putting the Agreement before the Court for approval. Thereafter, the Purchaser acknowledges that the Receiver is subject to the jurisdiction and discretion of the Court to entertain other offers and any further orders the Court may make regarding the Purchased Assets. Given the Receiver's position as receiver and manager, the Receiver may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Purchased Assets. The Receiver gives no assurance or undertaking to advocate the approval of this Agreement by the Court. The Purchaser acknowledges

that it must make its own arrangements to support the approval of this Agreement in Court.

## **ARTICLE 14 TERMINATION**

### **14.1 Termination of this Agreement.**

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser; or
- (4) pursuant to section 11.3 hereof.

### **14.2 Effect of Termination.**

- (1) If the Receiver terminates this Agreement as a result of the non-fulfilment of the conditions contained within sections 7.1(1), (2), (3) or (4), the Receiver's recourse as against the Purchaser shall be limited solely to the forfeiture of the Deposit.
- (2) If the Purchaser terminates this Agreement, the Receiver and the Company shall have no liability in connection with this Agreement except to the extent arising from wilful misconduct.

### **14.3 Termination.**

If this Agreement is terminated, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that expressly survive the termination of this Agreement (including, without restriction, any obligation of the Receiver to return the Deposit to the Purchaser, where applicable);
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein; and
- (3) the Deposit shall be: (i) forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages, if the Receiver terminates this Agreement as a result of the non-fulfilment of the conditions contained within sections 7.1(1), (2), (3) or (4); or (ii) returned to the Purchaser without interest if this Agreement is terminated for any other reason.

**ARTICLE 15**  
**GENERAL CONTRACT PROVISIONS**

**15.1 Further Assurances.**

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver and/or the Company shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

**15.2 Survival Following Completion.**

Notwithstanding any other provision of this Agreement Article 8, Article 9, section 11.2(3), section 14.2 and section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of BDO Canada Limited as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof. None of the representations, warranties and covenants of the Parties set forth in this Agreement, in any other Transaction Document or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transaction shall survive Closing.

**15.3 Notice.**

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

BDO Canada Limited  
20 Wellington St E, Suite 500  
Toronto, ON M5E 1C5

Attention: Doris Zheng  
Tel: 647-730-0971  
Email: dozheng@bdo.ca

and a copy to the Receiver's counsel to:

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 – 3<sup>rd</sup> St SW  
Calgary, AB T2P 5C5

Attention: Jeffrey Oliver  
Tel: 403-351-2921  
Email: joliver@cassels.com

(b) to the Purchaser:

Scorpio Masonry (Northern) Inc.  
20203 – 113 Avenue NW  
Edmonton, AB T5S 2W1

Attention: Chris Ambrozic  
Tel: 780-447-1682  
Email: chris.ambrozic@scopiomasonry.com

and a copy to the Purchaser's counsel to:

Swainson Miki Peskett LLP  
2800, 10104 – 103 Ave NW  
Edmonton, AB T5J 0H8

Attention: Ryan C. Kemp  
Tel: 780-809-7807  
Email: rkemp@smpllp.ca

or such other address of which Notice has been given. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email or courier will be deemed given and received on the first Business Day after its transmission.

#### **15.4 Waiver.**

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

#### **15.5 Consent.**

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

## **15.6 Governing Law.**

This Agreement will be interpreted by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Alberta sitting in Calgary. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

## **15.7 Entire Agreement.**

This Agreement and the other Transaction Documents constitutes the entire agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

## **15.8 Time of the Essence.**

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

## **15.9 Time Periods.**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

## **15.10 Assignment.**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser shall not assign this Agreement without the Receiver's prior written approval, which approval shall not be unreasonably withheld. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into. The Purchaser shall not be released from any of its obligations or liabilities under this Agreement upon the completion of any such approved assignment.

## **15.11 Expenses.**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement



and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

#### **15.12 Severability.**

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

#### **15.13 No Strict Construction.**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

#### **15.14 Currency.**

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

#### **15.15 Receiver's Capacity.**

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

#### **15.16 Successor Employer**

The Receiver makes no representations that the Purchaser will not be a successor employer with respect to employees of the Company who accept employment with the Purchaser and commence employment upon the Closing. The Receiver shall have no liability for any such claims made by any party with respect to the Purchaser being a successor employer.

#### **15.17 No Third Party Beneficiaries.**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum, save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular representative in connection therewith.

#### **15.18 Number and Gender.**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

### **15.19 Counterparts.**

This Agreement may be executed in counterparts and by facsimile, PDF, DocuSign, or other form of electronic signature, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

### **15.20 Misapplied Funds**

If the Receiver or the Purchaser receives in its possession or control (such Party, the “**Receiving Party**”) after the Closing Time an amount that is properly payable to the account of the other Party pursuant to the terms of this Agreement, such amount shall be held by the Receiving Party in trust for the benefit of the other Party, and the Receiving Party shall promptly give notice to the other Party that the Receiving Party is in possession or control of such amount and promptly pay such amount so received to the other Party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed receiver of certain property, assets and undertakings of Metro Paving Ltd., and not in its corporate or personal capacity

By: \_\_\_\_\_

Name: Clark Lonergan  
Title: Senior Vice President, Financial Recovery Services

I have authority to bind the Receiver

**SCORPIO MASONRY (NORTHERN) INC.**

By:  \_\_\_\_\_

Name: Chris Ambrozic  
Title: A.S.O.

By: \_\_\_\_\_

Name:  
Title:

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed receiver of certain property, assets and undertakings of Metro Paving Ltd., and not in its corporate or personal capacity



By: \_\_\_\_\_

Name: Clark Lonergan  
Title: Senior Vice President, Financial Recovery Services

I have authority to bind the Receiver

**SCORPIO MASONRY (NORTHERN) INC.**

By: \_\_\_\_\_

Name: Chris Ambrozic  
Title: A.S.O.

By: \_\_\_\_\_

Name:  
Title:

**SCHEDULE "A"**  
**FORM OF DRAFT APPROVAL AND VESTING ORDER**

See attached.

00076531/0014/00178195 2

0076531/0014/00162879 2  
LEGAL\*53111815.12

COURT FILE NUMBER 2101-00809  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF BANK OF MONTREAL  
DEFENDANT METRO PAVING AND ROADBUILDING LTD., METRO PAVING LTD.,  
METRO PARS CORPORATION and GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION  
DOCUMENT **APPROVAL AND VESTING ORDER**

Clerk's Stamp

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENT

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW

Calgary, Alberta, T2P 5C5

Telephone: (403) 351-2921

Facsimile: (403) 648-1151

Email: [joliver@cassels.com](mailto:joliver@cassels.com) / [dmarechal@cassels.com](mailto:dmarechal@cassels.com)

File No.: 28677-31

Attention: Jeffrey Oliver / Danielle Marechal

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 30, 2021

**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary, Alberta

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice L.B. Ho

**UPON THE APPLICATION** BDO Canada Limited, in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the assets, undertakings and properties of Metro Paving and Roadbuilding Ltd. ("**Roadbuilding**"), Metro Paving Ltd. ("**Paving**"), Metro Pars Corporation ("**Pars**") and Grasslands of Beiseker Development Corporation ("**Grasslands**" and together with Roadbuilding and Pars, the "**Debtors**") for an Order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Scorpio Masonry (Northern) Inc. (the "**Purchaser**") dated June 21, 2021, and appended to the Third Report of the Receiver dated June 21, 2021 (the "**Report**") in redacted form as Appendix "E" and unredacted form as Appendix "D" to the Confidential Supplement to the Report (the "**Confidential Supplement**"), and vesting in the Purchaser (or

its nominee) the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");

**AND UPON HAVING READ** the Receivership Order dated January 20, 2021 (the "**Receivership Order**"), the Report, the Confidential Supplement, and the Affidavit of Service of Richard Kay sworn June [●], 2021; **AND UPON HEARING** the submissions of counsel for the Receiver and any other interested parties in attendance;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

**APPROVAL OF TRANSACTION**

2. The Transaction is hereby approved and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).

**VESTING OF PROPERTY**

3. Upon delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Closing Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets listed in **Schedule "B"** hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
  - (a) any encumbrances or charges created by the Receivership Order;

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

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

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
  - (i) cancel existing Certificates of Title No. 871 169 162 for those lands and premises municipally described as 7615-40 St NE, Calgary, Alberta, and legally described as:

PLAN CALGARY 2474JK

BLOCK FIVE (5)

LOT NINE (9)

EXCEPTING THEREOUT:

PLAN	NUMBER	AREA
------	--------	------

ROAD	8611132	PORTION
------	---------	---------

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**")



- (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee), namely, SCORPIO MASONRY (NORTHERN) INC.;
  - (iii) transfer to the New Certificate of Title the existing instruments listed in **Schedule “D”**, to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in **Schedule “D”**; and
  - (iv) discharge and expunge the Encumbrances listed in **Schedule “C”** to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands; and
- (b) the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver’s Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
  6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
  7. Upon delivery of the Receiver’s Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity.
  8. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in

the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from 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. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

9. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtors.
10. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser (or its nominee) 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) to which the Debtors were entitled.

#### **MISCELLANEOUS MATTERS**

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

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist 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 order and to provide such assistance to the Receiver, as an officer of the 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.

18. Service of this Order shall be deemed good and sufficient by:
- (a) Serving the same on:
    - (i) the persons listed on the service list created in these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;
    - (iv) the Purchaser or the Purchaser's solicitors; and
  - (b) Posting a copy of this Order on the Receiver's website at: <https://www.bdo.ca/en-ca/extranets/metrogroupofcompanies/>

and service on any other person is hereby dispensed with.

19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

---

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "B"**  
**CHATELS**

1. ACCENT SWITCHVIEW 1000 8-PORT KVM SWITCH, S/N: N/A
2. TYCO VIDEO RECEIVER WITH (8) CAMERAS, S/N: N/A
3. LOT/ WESTERN DIGITAL AND IOMEGA DRIVES
4. HP PROLIANT DL380 GEN9 SERVER AND ATEN MASTERVIEW MAX, S/N: N/A
5. LOT/ (1) APC UPS SMART-UPS 3000RT AND (1) APC UPS SMART-UPS 3000XL  
POWER BACKUPS
6. APC SERVER TOWER ENCLOSURE, S/N: N/A
7. SOPHOS XG 210 FIREWALL WITH (3) PROCURVE SWITCHES, S/N: N/A
8. PANASONIC KX-TDA100 PHONE SYSTEM WITH HANDSETS, S/N: N/A

**SCHEDULE "C"**  
**LEGAL DESCRIPTION OF LANDS**

PLAN CALGARY 2474JK

BLOCK FIVE (5)

LOT NINE (9)

EXCEPTING THEREOUT:

PLAN	NUMBER	AREA
------	--------	------

ROAD	8611132	PORTION
------	---------	---------

EXCEPTING THEREOUT ALL MINES AND MINERALS

See attached certificate of title.

**SCHEDULE "D"**  
**PERMITTED ENCUMBRANCES**

<b>Registration Number</b>	<b>Date</b>	<b>Particulars</b>
1200KK	February 4, 1969	Utility Right of Way  Grantee – Canadian Western Natural Gas Company
771 147 064	October 20, 1977	Zoning Regulations Subject to Calgary International Airport Zoning Regulations
851 080 981	May 21, 1985	Caveat Re: See Caveat  Caveator – The City of Calgary
191 091 148	May 14, 2019	Caveat Re: Lease Interest  Caveator – Ledcor Construction Ltd.

**APPENDIX F –  
Statement of Claim – Horseshoe Claim (WKA  
Lawyers), filed May 26, 2021**



2101 06038

[Rule 3.25]

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS

HORSESHOE CONTRACTING LTD. and  
875242 ALBERTA LTD.

DEFENDANTS

GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION, METRO  
PAVING AND ROADBUILDING LTD., RON  
FRIESEN, AARON BADGER and BANK OF  
MONTREAL



52622

DOCUMENT

**STATEMENT OF CLAIM**

PARTY FILING THIS DOCUMENT  
ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Warnock Kraft Anderson  
225 First Avenue NW  
Airdrie, Alberta T4B 2M8  
Phone: 403-948-009  
Email: robanderson@wkalawyers.ca  
Attention: Rob Anderson

**NOTICE TO DEFENDANTS**

You are being sued. You are a defendant.

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

**Statement of facts relied on:****Plaintiffs**

1. The Plaintiff, Horseshoe Contracting Ltd. (“**Horseshoe**”), is a duly incorporated Alberta company, carries on business in the city of Calgary and elsewhere in Alberta and is a mortgagee pursuant to the Horseshoe/Eclipse/Metro Mortgage (defined below).
2. The Plaintiff, 875242 Alberta Ltd. (“**875**”), is a duly incorporated Alberta company, carries on business in the city of Calgary and elsewhere in Alberta and is successor to the interest of Eclipse Geomatics and Engineering Ltd. (“**Eclipse**”) as a mortgagee pursuant to the Horseshoe/Eclipse/Metro Mortgage.

**Defendants**

3. The Defendant, Grasslands of Beiseker Development Corporation (“**Grasslands**”), is an Alberta real estate development company which at all material times carried on the business of real estate development and sale of residential lots it had developed at the town of Beiseker, Alberta.
4. The Defendant, Metro Paving and Road Building Ltd. (“**Metro Roadbuilding**”), is an Alberta company which is an affiliate of Grasslands and at all material times carried on the business of paving and roadbuilding in the city of Calgary and elsewhere in Alberta.
5. The Defendant, Ron Friesen (“**Friesen**”), is an individual who resides in Alberta.
6. At all material times Friesen was a director and officer of Grasslands and Metro Roadbuilding and a director and/or officer of their other affiliates including Metro Pars Corporation (“**Metro Pars**”), Metro Paving Ltd. (“**Metro Paving**”) and Ron and Linda Friesen Family Trust (“**Friesen Trust**”).
7. At all material times the Friesen Trust directly or indirectly owned and controlled each of Grasslands, Metro Roadbuilding, Metro Pars and Metro Paving.
8. The Defendant, Aaron Badger (“**Badger**”), is an individual who resides in Alberta and at all material times was an officer of Grasslands and Metro Roadbuilding.
9. The Defendant, Bank of Montreal (“**BMO**”), is a Canadian chartered bank, carries on business in the city of Calgary and elsewhere in Alberta and at all material times was the banker and lender to Metro Roadbuilding.

### **Beiseker Development**

10. On or about November 1, 2012 Metro Roadbuilding, Horseshoe and Eclipse entered into an Indebtedness Agreement with Grasslands (the "**Indebtedness Agreement**") pursuant to which, *inter alia*:
  - a. The parties acknowledged that Grasslands was indebted to John Richter ("**Richter**") in the amount of \$301,566.82. As security for that indebtedness, Richter held a first registered mortgage ("**Richter Mortgage**") against title to lands (the "**Lands**") owned by Grasslands,
  - b. Grasslands acknowledged itself indebted in the aggregate amount of \$1,269,568.00 to Horseshoe (19%), Eclipse (12%) and Metro Roadbuilding (69%), for development services they had provided,
  - c. Grasslands agreed to execute and deliver a new mortgage ("**Horseshoe/Eclipse/Metro Mortgage**") to Metro Roadbuilding, Horseshoe and Eclipse against the Lands, to secure its indebtedness to them (replacing an existing mortgage to them which they agreed to discharge),
  - d. Proceeds of sale of individual lots of the Lands (after payment of sale transaction and other designated costs) were to be paid by Grasslands to Horseshoe, Eclipse and Metro Roadbuilding in the proportions indicated in paragraph 10(b) above,
  - e. Horseshoe, Eclipse and Metro Roadbuilding agreed to partially discharge the Horseshoe/Eclipse/Metro Mortgage as against the individual lots as they were sold, and
  - f. Horseshoe and Eclipse agreed to appoint Metro Roadbuilding as their irrevocable attorney to execute the discharges.
11. The Horseshoe/Eclipse/Metro Mortgage was executed by Grasslands on November 1, 2012 and registered against title to the Lands as instrument no. 131 048 869.
12. On November 30, 2013, Metro Roadbuilding, Horseshoe and Eclipse transferred the Horseshoe/Eclipse/Metro Mortgage to Metro Roadbuilding, Horseshoe and 875 (successor to Eclipse's interest).
13. On December 11, 2013, a Power of Attorney ("**Power of Attorney**") was signed by Metro Roadbuilding, Horseshoe and 875 and registered against title to the Lands as instrument no. 151 238 368. The Power of Attorney appointed Metro Roadbuilding to be the attorney for Horseshoe and 875, and for their sole use and benefit, to do the following on their behalf:

1. To enter into one or more mortgages, charges or encumbrances of the Lands;
2. To cause the existing mortgage on the Lands to be discharged; and
3. To execute any and all related directions, authorizations, declarations, statements and any other matters that may be required arising from or ancillary to any of the above.

### **BMO Financing**

14. Metro Roadbuilding had a margin loan facility with BMO (the "**Metro Loan Facility**") and by March 2020 its indebtedness to BMO was over \$5 million. Until March of 2020, the only guarantors of the Metro Loan Facility were its affiliates, Metro Pars and Metro Paving.
15. Until March, 2020, Grasslands was not indebted to BMO, nor a guarantor of the Metro Loan Facility.
16. By March, 2020, Grasslands' secured creditors continued to be Metro Roadbuilding, Horseshoe and 875, who jointly held the Horseshoe/Eclipse/Metro Mortgage on the Lands.
17. On or about March 3, 2020, BMO entered into a letter of agreement ("**LOA1**") with Grasslands as borrower, and Metro Roadbuilding, Metro Paving and Metro Pars as guarantors, pursuant to which:
  - a. BMO agreed to loan Grasslands \$300,000 for the purpose of paying out and discharging the first registered Richter Mortgage;
  - b. Metro Roadbuilding, Metro Paving and Metro Pars each guaranteed the \$300,000 loan; and
  - c. Grasslands agreed to grant to BMO a first mortgage on the Lands for \$3,000,000 and a Security Agreement (GSA) as well as other collateral security.
17. On or about March 3 and 4, 2020, BMO entered into a letter of agreement ("**LOA2**") with Metro Roadbuilding as borrower, and Metro Paving and Metro Pars as guarantors, and with Grasslands added by amendment of LOA2 as an additional guarantor, pursuant to which:
  - a. BMO agreed, inter alia, to renew an approximately \$5 million margined operating loan facility for Metro Roadbuilding. By the amendment, which added Grasslands

as guarantor, the unmargined portion of the operating facility for Metro Roadbuilding was increased to \$1.5 million until May 31, 2020.

- b. The LOA2 loan facility was guaranteed by Metro Paving and Metro Pars and, for the first time, by Grasslands; and
  - c. Grasslands agreed to provide to BMO a \$3,000,000 first mortgage on the Lands as security for its obligations.
18. The \$3,000,000 mortgage to BMO ("**BMO Mortgage**") was purportedly authorized by Friesen, as director of Grasslands, signed by Badger, as an officer of Grasslands, and registered against title to the Lands on March 31, 2020 as instrument no. 201 063 192.
  19. A postponement ("**Postponement**") of the Horseshoe/Eclipse/Metro Mortgage to the BMO Mortgage was purportedly authorized by Friesen as director of Metro Roadbuilding and signed by Badger as an officer of Metro Roadbuilding on its own behalf, and purportedly, on behalf of Horseshoe and 875 pursuant to the Power of Attorney. The Postponement was registered against title to the Lands on April 15, 2020 as instrument no. 201 071 619. (The transactions referenced in paragraphs 17-19 above including execution and delivery of the Grasslands guarantee, BMO Mortgage and Postponement in favour of BMO are collectively referred to as the "**BMO Preference**".)
  20. Metro Roadbuilding, Metro Paving, Metro Pars and Grasslands all defaulted on the loan facilities with BMO, notices of intention to enforce were issued on November 19, 2020, and forbearance agreements were entered into on December 11, 2020. All of them consented to a receivership order being granted on January 20, 2021. BDO Canada Limited was appointed receiver and manager.

### **Postponement Not Authorized**

21. The Power of Attorney did not authorize Metro Roadbuilding to enter into the Postponement on behalf of Horseshoe or 875, the Postponement was never authorized by them and is invalid and/or unenforceable.

**BMO Preference**

22. The BMO Preference was made by Grasslands:
- a. when it:
    - i. was in insolvent circumstances, or
    - ii. was unable to pay its debts in full, or
    - iii. was rendered insolvent by the BMO Preference, or
    - iv. knew that it was on the eve of insolvency, and
  - b. with intent to defeat, hinder, delay or prejudice Grasslands' creditors or any one or more of them, or
  - c. to or for BMO with intent to give it preference over the other creditors of Grasslands or over any one or more of them, or
  - d. to or for BMO and having the effect of giving it preference over the other creditors of Grasslands or over any one or more of them.

**Oppression, Civil Conspiracy and/or Interference with Contractual Relations**

23. The BMO Preference was authorized and made by Friesen and Badger in their capacity as directors and/or officers of Grasslands. Accordingly, they owed duties to Grasslands to act prudently and in the best interest of Grasslands and its constituents including its creditors and to do so without comprise.
24. Instead, by effecting the BMO Preference, Friesen and Badger breached their duties to Grasslands and acted in self-interest and/or in the interest of Metro Roadbuilding and contrary to the best interests of Grasslands, and in a manner that was oppressive and/or unfairly prejudicial to the interests of Grasslands and its creditors including, in particular, Horseshoe and 875.
25. Execution, registration and use of the Postponement by Badger of Metro Roadbuilding purportedly on behalf of Horseshoe and 875 was unauthorized and unlawful.
26. Friesen, Badger and BMO participated in the BMO Preference when they knew or ought to have known and were wilfully blind to the following:

- a. Friesen and Badger were in breach of their duties referred to in paragraph 23 above and acted in a manner that was oppressive and unfairly prejudicial to the interests of Grasslands and its creditors including in particular, Horseshoe and 875,
  - b. execution, registration and use of the Postponement was unauthorized and unlawful,
  - c. the BMO Preference was an attempt to provide BMO with an unlawful preference, and
  - d. Horseshoe and 875 would suffer delay and/or damage as a result of the foregoing.
27. In the circumstances referenced in paragraphs 23-26 above, participation by BMO, Friesen and Badger with Metro Roadbuilding and Grasslands in effecting the BMO Preference constitutes:
- a. civil conspiracy of BMO, Friesen, Badger, Grasslands and Metro Roadbuilding by their agreement to effect the BMO Preference:
    - i. with intent to prefer BMO over other creditors of Grasslands including in particular Horseshoe and 875, and/or
    - ii. which they knew or ought to have known would constitute a breach of Friesen's and Badger's duties to Grasslands referred to in paragraph 23 above, oppressive and/or unfairly prejudicial to the interests of Grasslands and its creditors including, in particular, Horseshoe and 875, and/or unauthorized and unlawful execution, registration and use of the Postponement;
  - b. interference by BMO in contractual relations among Grasslands, Metro Roadbuilding, Horseshoe and 875.
28. BMO, Friesen, Badger, Grasslands and Metro Roadbuilding are jointly and severally liable for all losses and damages incurred by Horseshoe and 875 as a result of the foregoing oppression, civil conspiracy and/or interference in contractual relations.

**Punitive Damages**

29. The conduct of BMO, Friesen, Badger, Grasslands and Metro Roadbuilding referred to paragraphs 23-26 above was unlawful and highhanded, was done with callous disregard for the rights and interests of Horseshoe and 875 and is deserving of sanction.

**Sale of Lots**

30. Grasslands sold at least 3 lots of the Lands prior to the receivership and discharged the Horseshoe/Eclipse/Metro Mortgage against those lots without paying any proceeds thereof to Horseshoe or 875 or accounting to them.

**Trial**

31. Horseshoe and 875 propose that any trial of this action take place at Calgary, Alberta and expect that any trial of this action will be less than 25 days.

**Relief Claimed by Horseshoe and 875:**

32. Accounting by Grasslands and Metro Roadbuilding regarding all pre-receivership proceeds of sale of lots of the Lands, including any portions thereof paid to Metro Roadbuilding.

33. A declaration:

- a. of the balances owing to Horseshoe, 875 and Metro Roadbuilding under the Horseshoe/Eclipse/Metro Mortgage and the amounts to be allocated to each from any proceeds of sale of the Lands;
- b. that the Power of Attorney did not authorize Metro Roadbuilding to enter into the Postponement on behalf of Horseshoe or 875 and that the Postponement was never authorized by them and is invalid and/or unenforceable,
- c. that the Horseshoe/Eclipse/Metro Mortgage has priority to the Lands and any sale proceeds therefrom, over the BMO Mortgage and any other instruments registered against title to the Lands in favour of BMO;



- d. in the alternative, that the BMO Mortgage has priority to the Lands and any sale proceeds therefrom, over the Horseshoe/Eclipse/Metro Mortgage, only to the extent of the \$300,000 advanced by BMO to payout the Richter Mortgage;
34. Further, or in the alternative, a declaration that the BMO Preference is void as against Horseshoe and 875 pursuant to the Fraudulent Preferences Act (Alberta) and Alberta Ministerial Order 27/2020.
35. Further, or in the alternative, judgment against BMO, Friesen, Badger, Grasslands and Metro Roadbuilding, jointly and severally, for all losses and damages incurred by Horseshoe and 875 as a result of their participation in the oppression, civil conspiracy and/or interference in contractual relations referred to above.
36. Punitive damages in the amount of \$100,000.
37. Costs including reasonable disbursements.
38. Such other relief as counsel for Horseshoe and 875 may advise and this Honourable Court will permit.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

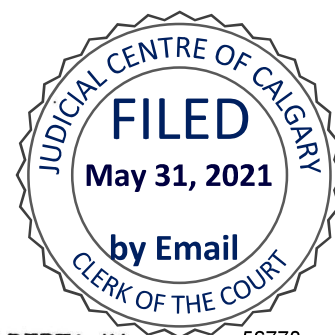
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff(s)' address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

**APPENDIX G –  
Order Lifting Stay of Proceedings Against Metro  
(WKA Lawyers), filed May 31, 2021**



2101 06038

COURT FILE NUMBER  
ESTATE FILE NUMBER

(25-2736990)

COURT

COURT OF QUEEN'S BENCH OF ALBERTA, IN  
BANKRUPTCY

56778

JUDICIAL CENTRE

CALGARY, ALBERTA

**IN THE MATTER OF THE BANKRUPTCY OF  
METRO PAVING AND ROADBUILDING LTD.**

APPLICANTS:

HORSESHOE CONTRACTING LTD. and  
875242 ALBERTA LTD.

RESPONDENTS:

BDO CANADA LIMITED in its capacity as  
Bankruptcy Trustee for METRO PAVING AND  
ROADBUILDING LTD.

DOCUMENT:

**CONSENT ORDER**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

**WARNOCK KRAFT ANDERSON**  
225 1st Avenue N.W.  
Airdrie, Alberta, T4B 2M8  
Solicitor: Rob Anderson  
Telephone: 403 948 0009 ext. 123  
Facsimile: 403 948 6740  
Email: robanderson@wkalawyers.ca  
File Number: 215009

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DATE ON WHICH ORDER WAS PRONOUNCED:

May 31, 2021

NAME OF REGISTRAR WHO MADE THIS ORDER:

J. Farrington

LOCATION OF HEARING:

CALGARY, ALBERTA

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**WHEREAS** METRO PAVING AND ROADBUILDING LTD (the "Bankrupt") was declared bankrupt on May 12, 2021;

**AND WHEREAS** BDO CANADA LIMITED was appointed the Trustee in Bankruptcy of the Bankrupt (the "Trustee") on May 12, 2021;

**AND UPON** being advised that HORSESHOE CONTRACTING LTD. and 875242 ALBERTA LTD. (together the "Applicants") have requested a lifting of the bankruptcy stay of proceedings in this matter for the purpose of filing the Statement of Claim attached as Schedule "A" to this Order (the "Statement of Claim") against several parties including, *inter alia*, the Bankrupt;

**AND UPON** noting the endorsed consent of this Order by counsels for the Applicants and the Trustee in its capacity as bankruptcy trustee for the Bankrupt;

**IT IS HEREBY ORDERED THAT:**

1. The bankruptcy stay of proceedings against the Bankrupt is hereby lifted to the extent necessary to permit the Applicants to file and serve the Statement of Claim.
2. Service of the Statement of Claim upon the Bankrupt shall be deemed good and sufficient by serving the Statement of Claim by email transmission to the Trustee's legal counsel by email at the following email address: [joliver@cassels.com](mailto:joliver@cassels.com)
3. Neither the Bankrupt nor the Trustee shall be required to file a defence to the Statement of Claim or otherwise take any steps to defend against the action commenced by the Statement of Claim unless otherwise agreed by the Applicant and Trustee, or as further ordered by the Court.


  
\_\_\_\_\_  
Master of the Court of Queen's Bench of Alberta

Consented to as to form and content by:

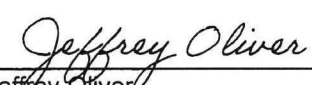
WARNOCK KRAFT ANDERSON

CASSELS BROCK AND BLACKWELL LLP

Per:

  
\_\_\_\_\_  
Rob Anderson  
Counsel for Horseshoe Contracting Ltd.  
and 875242 Alberta Ltd..

Per:

  
\_\_\_\_\_  
Jeffrey Oliver  
Counsel for BDO Canada Limited, in its  
capacity as Bankruptcy Trustee for Metro  
Paving and Roadbuilding Ltd.

**SCHEDULE 'A'**

[Rule 3.25]

COURT FILE NUMBER

COURT

JUDICIAL CENTRE

PLAINTIFFS

DEFENDANTS

DOCUMENT

PARTY FILING THIS DOCUMENT  
ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

**NOTICE TO DEFENDANTS**

You are being sued. You are a defendant.

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

COURT OF QUEEN'S BENCH OF ALBERTA

CALGARY

HORSESHOE CONTRACTING LTD. and  
875242 ALBERTA LTD.

GRASSLANDS OF BEISEKER  
DEVELOPMENT CORPORATION, METRO  
PAVING AND ROADBUILDING LTD., RON  
FRIESEN, AARON BADGER and BANK OF  
MONTREAL

**STATEMENT OF CLAIM**

Warnock Kraft Anderson  
225 First Avenue NW  
Airdrie, Alberta T4B 2M8  
Phone: 403-948-009  
Email: [robanderson@wkalawyers.ca](mailto:robanderson@wkalawyers.ca)  
Attention: Rob Anderson

Clerk's Stamp

**Statement of facts relied on:****Plaintiffs**

1. The Plaintiff, Horseshoe Contracting Ltd. ("**Horseshoe**"), is a duly incorporated Alberta company, carries on business in the city of Calgary and elsewhere in Alberta and is a mortgagee pursuant to the Horseshoe/Eclipse/Metro Mortgage (defined below).
2. The Plaintiff, 875242 Alberta Ltd. ("**875**"), is a duly incorporated Alberta company, carries on business in the city of Calgary and elsewhere in Alberta and is successor to the interest of Eclipse Geomatics and Engineering Ltd. ("**Eclipse**") as a mortgagee pursuant to the Horseshoe/Eclipse/Metro Mortgage.

**Defendants**

3. The Defendant, Grasslands of Beiseker Development Corporation ("**Grasslands**"), is an Alberta real estate development company which at all material times carried on the business of real estate development and sale of residential lots it had developed at the town of Beiseker, Alberta.
4. The Defendant, Metro Paving and Road Building Ltd. ("**Metro Roadbuilding**"), is an Alberta company which is an affiliate of Grasslands and at all material times carried on the business of paving and roadbuilding in the city of Calgary and elsewhere in Alberta.
5. The Defendant, Ron Friesen ("**Friesen**"), is an individual who resides in Alberta.
6. At all material times Friesen was a director and officer of Grasslands and Metro Roadbuilding and a director and/or officer of their other affiliates including Metro Pars Corporation ("**Metro Pars**"), Metro Paving Ltd. ("**Metro Paving**") and Ron and Linda Friesen Family Trust ("**Friesen Trust**").
7. At all material times the Friesen Trust directly or indirectly owned and controlled each of Grasslands, Metro Roadbuilding, Metro Pars and Metro Paving.
8. The Defendant, Aaron Badger ("**Badger**"), is an individual who resides in Alberta and at all material times was an officer of Grasslands and Metro Roadbuilding.
9. The Defendant, Bank of Montreal ("**BMO**"), is a Canadian chartered bank, carries on business in the city of Calgary and elsewhere in Alberta and at all material times was the banker and lender to Metro Roadbuilding.

**Beiseker Development**

10. On or about November 1, 2012 Metro Roadbuilding, Horseshoe and Eclipse entered into an Indebtedness Agreement with Grasslands (the "**Indebtedness Agreement**") pursuant to which, *inter alia*:
  - a. The parties acknowledged that Grasslands was indebted to John Richter ("**Richter**") in the amount of \$301,566.82. As security for that indebtedness, Richter held a first registered mortgage ("**Richter Mortgage**") against title to lands (the "**Lands**") owned by Grasslands,
  - b. Grasslands acknowledged itself indebted in the aggregate amount of \$1,269,568.00 to Horseshoe (19%), Eclipse (12%) and Metro Roadbuilding (69%), for development services they had provided,
  - c. Grasslands agreed to execute and deliver a new mortgage ("**Horseshoe/Eclipse/Metro Mortgage**") to Metro Roadbuilding, Horseshoe and Eclipse against the Lands, to secure its indebtedness to them (replacing an existing mortgage to them which they agreed to discharge),
  - d. Proceeds of sale of individual lots of the Lands (after payment of sale transaction and other designated costs) were to be paid by Grasslands to Horseshoe, Eclipse and Metro Roadbuilding in the proportions indicated in paragraph 10(b) above,
  - e. Horseshoe, Eclipse and Metro Roadbuilding agreed to partially discharge the Horseshoe/Eclipse/Metro Mortgage as against the individual lots as they were sold, and
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11. The Horseshoe/Eclipse/Metro Mortgage was executed by Grasslands on November 1, 2012 and registered against title to the Lands as instrument no. 131 048 869.
12. On November 30, 2013, Metro Roadbuilding, Horseshoe and Eclipse transferred the Horseshoe/Eclipse/Metro Mortgage to Metro Roadbuilding, Horseshoe and 875 (successor to Eclipse's interest).
13. On December 11, 2013, a Power of Attorney ("**Power of Attorney**") was signed by Metro Roadbuilding, Horseshoe and 875 and registered against title to the Lands as instrument no. 151 238 368. The Power of Attorney appointed Metro Roadbuilding to be the attorney for Horseshoe and 875, and for their sole use and benefit, to do the following on their behalf:



1. To enter into one or more mortgages, charges or encumbrances of the Lands;
2. To cause the existing mortgage on the Lands to be discharged; and
3. To execute any and all related directions, authorizations, declarations, statements and any other matters that may be required arising from or ancillary to any of the above.

### **BMO Financing**

14. Metro Roadbuilding had a margin loan facility with BMO (the "Metro Loan Facility") and by March 2020 its indebtedness to BMO was over \$5 million. Until March of 2020, the only guarantors of the Metro Loan Facility were its affiliates, Metro Pars and Metro Paving.
15. Until March, 2020, Grasslands was not indebted to BMO, nor a guarantor of the Metro Loan Facility.
16. By March, 2020, Grasslands' secured creditors continued to be Metro Roadbuilding, Horseshoe and 875, who jointly held the Horseshoe/Eclipse/Metro Mortgage on the Lands.
17. On or about March 3, 2020, BMO entered into a letter of agreement ("LOA1") with Grasslands as borrower, and Metro Roadbuilding, Metro Paving and Metro Pars as guarantors, pursuant to which:
  - a. BMO agreed to loan Grasslands \$300,000 for the purpose of paying out and discharging the first registered Richter Mortgage;
  - b. Metro Roadbuilding, Metro Paving and Metro Pars each guaranteed the \$300,000 loan; and
  - c. Grasslands agreed to grant to BMO a first mortgage on the Lands for \$3,000,000 and a Security Agreement (GSA) as well as other collateral security.
17. On or about March 3 and 4, 2020, BMO entered into a letter of agreement ("LOA2") with Metro Roadbuilding as borrower, and Metro Paving and Metro Pars as guarantors, and with Grasslands added by amendment of LOA2 as an additional guarantor, pursuant to which:
  - a. BMO agreed, inter alia, to renew an approximately \$5 million margined operating loan facility for Metro Roadbuilding. By the amendment, which added Grasslands

- as guarantor, the unmargined portion of the operating facility for Metro Roadbuilding was increased to \$1.5 million until May 31, 2020.
- b. The LOA2 loan facility was guaranteed by Metro Paving and Metro Pars and, for the first time, by Grasslands; and
  - c. Grasslands agreed to provide to BMO a \$3,000,000 first mortgage on the Lands as security for its obligations.
18. The \$3,000,000 mortgage to BMO ("**BMO Mortgage**") was purportedly authorized by Friesen, as director of Grasslands, signed by Badger, as an officer of Grasslands, and registered against title to the Lands on March 31, 2020 as instrument no. 201 063 192.
  19. A postponement ("**Postponement**") of the Horseshoe/Eclipse/Metro Mortgage to the BMO Mortgage was purportedly authorized by Friesen as director of Metro Roadbuilding and signed by Badger as an officer of Metro Roadbuilding on its own behalf, and purportedly, on behalf of Horseshoe and 875 pursuant to the Power of Attorney. The Postponement was registered against title to the Lands on April 15, 2020 as instrument no. 201 071 619. (The transactions referenced in paragraphs 17-19 above including execution and delivery of the Grasslands guarantee, BMO Mortgage and Postponement in favour of BMO are collectively referred to as the "**BMO Preference**".)
  20. Metro Roadbuilding, Metro Paving, Metro Pars and Grasslands all defaulted on the loan facilities with BMO, notices of intention to enforce were issued on November 19, 2020, and forbearance agreements were entered into on December 11, 2020. All of them consented to a receivership order being granted on January 20, 2021. BDO Canada Limited was appointed receiver and manager.

#### **Postponement Not Authorized**

21. The Power of Attorney did not authorize Metro Roadbuilding to enter into the Postponement on behalf of Horseshoe or 875, the Postponement was never authorized by them and is invalid and/or unenforceable.

**BMO Preference**

22. The BMO Preference was made by Grasslands:
- a. when it:
    - i. was in insolvent circumstances, or
    - ii. was unable to pay its debts in full, or
    - iii. was rendered insolvent by the BMO Preference, or
    - iv. knew that it was on the eve of insolvency, and
  - b. with intent to defeat, hinder, delay or prejudice Grasslands' creditors or any one or more of them, or
  - c. to or for BMO with intent to give it preference over the other creditors of Grasslands or over any one or more of them, or
  - d. to or for BMO and having the effect of giving it preference over the other creditors of Grasslands or over any one or more of them.

**Oppression, Civil Conspiracy and/or Interference with Contractual Relations**

23. The BMO Preference was authorized and made by Friesen and Badger in their capacity as directors and/or officers of Grasslands. Accordingly, they owed duties to Grasslands to act prudently and in the best interest of Grasslands and its constituents including its creditors and to do so without comprise.
24. Instead, by effecting the BMO Preference, Friesen and Badger breached their duties to Grasslands and acted in self-interest and/or in the interest of Metro Roadbuilding and contrary to the best interests of Grasslands, and in a manner that was oppressive and/or unfairly prejudicial to the interests of Grasslands and its creditors including, in particular, Horseshoe and 875.
25. Execution, registration and use of the Postponement by Badger of Metro Roadbuilding purportedly on behalf of Horseshoe and 875 was unauthorized and unlawful.
26. Friesen, Badger and BMO participated in the BMO Preference when they knew or ought to have known and were wilfully blind to the following:

- a. Friesen and Badger were in breach of their duties referred to in paragraph 23 above and acted in a manner that was oppressive and unfairly prejudicial to the interests of Grasslands and its creditors including in particular, Horseshoe and 875,
  - b. execution, registration and use of the Postponement was unauthorized and unlawful,
  - c. the BMO Preference was an attempt to provide BMO with an unlawful preference, and
  - d. Horseshoe and 875 would suffer delay and/or damage as a result of the foregoing.
27. In the circumstances referenced in paragraphs 23-26 above, participation by BMO, Friesen and Badger with Metro Roadbuilding and Grasslands in effecting the BMO Preference constitutes:
- a. civil conspiracy of BMO, Friesen, Badger, Grasslands and Metro Roadbuilding by their agreement to effect the BMO Preference:
    - i. with intent to prefer BMO over other creditors of Grasslands including in particular Horseshoe and 875, and/or
    - ii. which they knew or ought to have known would constitute a breach of Friesen's and Badger's duties to Grasslands referred to in paragraph 23 above, oppressive and/or unfairly prejudicial to the interests of Grasslands and its creditors including, in particular, Horseshoe and 875, and/or unauthorized and unlawful execution, registration and use of the Postponement;
  - b. interference by BMO in contractual relations among Grasslands, Metro Roadbuilding, Horseshoe and 875.
28. BMO, Friesen, Badger, Grasslands and Metro Roadbuilding are jointly and severally liable for all losses and damages incurred by Horseshoe and 875 as a result of the foregoing oppression, civil conspiracy and/or interference in contractual relations.

**Punitive Damages**

29. The conduct of BMO, Friesen, Badger, Grasslands and Metro Roadbuilding referred to paragraphs 23-26 above was unlawful and highhanded, was done with callous disregard for the rights and interests of Horseshoe and 875 and is deserving of sanction.

**Sale of Lots**

30. Grasslands sold at least 3 lots of the Lands prior to the receivership and discharged the Horseshoe/Eclipse/Metro Mortgage against those lots without paying any proceeds thereof to Horseshoe or 875 or accounting to them.

**Trial**

31. Horseshoe and 875 propose that any trial of this action take place at Calgary, Alberta and expect that any trial of this action will be less than 25 days.

**Relief Claimed by Horseshoe and 875:**

32. Accounting by Grasslands and Metro Roadbuilding regarding all pre-receivership proceeds of sale of lots of the Lands, including any portions thereof paid to Metro Roadbuilding.
33. A declaration:
- a. of the balances owing to Horseshoe, 875 and Metro Roadbuilding under the Horseshoe/Eclipse/Metro Mortgage and the amounts to be allocated to each from any proceeds of sale of the Lands;
  - b. that the Power of Attorney did not authorize Metro Roadbuilding to enter into the Postponement on behalf of Horseshoe or 875 and that the Postponement was never authorized by them and is invalid and/or unenforceable,
  - c. that the Horseshoe/Eclipse/Metro Mortgage has priority to the Lands and any sale proceeds therefrom, over the BMO Mortgage and any other instruments registered against title to the Lands in favour of BMO;

- d. in the alternative, that the BMO Mortgage has priority to the Lands and any sale proceeds therefrom, over the Horseshoe/Eclipse/Metro Mortgage, only to the extent of the \$300,000 advanced by BMO to payout the Richter Mortgage;
- 34. Further, or in the alternative, a declaration that the BMO Preference is void as against Horseshoe and 875 pursuant to the Fraudulent Preferences Act (Alberta) and Alberta Ministerial Order 27/2020.
- 35. Further, or in the alternative, judgment against BMO, Friesen, Badger, Grasslands and Metro Roadbuilding, jointly and severally, for all losses and damages incurred by Horseshoe and 875 as a result of their participation in the oppression, civil conspiracy and/or interference in contractual relations referred to above.
- 36. Punitive damages in the amount of \$100,000.
- 37. Costs including reasonable disbursements.
- 38. Such other relief as counsel for Horseshoe and 875 may advise and this Honourable Court will permit.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff(s)' address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

**APPENDIX H –  
Summary of Professional Fees and  
Disbursements of the Receiver**



**METRO ENTITIES**  
**Summary of Professional Fees and Disbursements of the Receiver**  
**For the period March 1 to May 15, 2021**

	Invoice	Fees	Costs	Subtotal	GST	Total
<b><i>For services rendered from:</i></b>						
March 1, 2021 to March 31, 2021	#CINV1176812	62,057.50	-	62,057.50	3,102.88	65,160.38
April 1, 2021 to May 15, 2021	#CINV1178637	56,200.25	82.75	56,283.00	2,814.15	59,097.15
<b>Total</b>		<b>118,257.75</b>	<b>82.75</b>	<b>118,340.50</b>	<b>5,917.03</b>	<b>124,257.53</b>

**APPENDIX I –**  
**Summary of Professional Fees and**  
**Disbursements of the Receiver’s Counsel**

**METRO ENTITIES**  
**Summary of Professional Fees and Disbursements of the Receiver's Counsel**  
**For the period March 1 to April 30, 2021**

	Invoice	Fees	Costs	Subtotal	GST	Total
<b><i>For services rendered from:</i></b>						
March 1, 2021 to March 31, 2021	#2136570	119,559.30	2,952.85	122,512.15	6,077.66	128,589.81
April 1, 2021 to April 30, 2021	#2139320	74,358.60	151.26	74,509.86	3,722.79	78,232.65
<b>Total</b>		<b>193,917.90</b>	<b>3,104.11</b>	<b>197,022.01</b>	<b>9,800.45</b>	<b>206,822.46</b>