

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE  
HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD  
SERVICES LIMITED**

Applicants

**MOTION RECORD OF THE APPLICANTS**  
(RE: Approval and Reverse Vesting Order)  
(Returnable September 11, 2025)

September 3, 2025

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**TO: THE SERVICE LIST**

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HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD  
SERVICES LIMITED**

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### **Monitor's Lien Notice Claimant List**

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE  
HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD  
SERVICES LIMITED**

Applicants

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# TAB 1

Court File No. CV-25-00741419-00CL

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

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED,  
YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS  
LTD., AND YARFIELD SERVICES LIMITED**

**NOTICE OF MOTION**  
(Returnable September 11, 2025)  
(RE Approval and Reverse Vesting Order)

Earth Boring Co. Limited ("**EBCL**"), Yarbridge Holdings Inc. ("**Yarbridge**"), Trolan Investments Ltd. ("**Trolan**"), and Yarfield Services Limited ("**Yarfield**" and collectively with EBCL, Trolan and Yarbridge, the "**Applicants**") will make a motion before Justice J. Dietrich of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on September 11, 2025 at 9:30 a.m. or as soon after that time as the motion can be heard via Zoom video conference.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1 (1) because it is on consent, unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

<https://ca01web.zoom.us/j/64683302309?pwd=hk4renYSbUXbUn41tPpZqSX8FIZNTI.1>

Meeting ID: 646 8330 2309

Passcode: 548152

**THE MOTION IS FOR:**

1. an Approval and Reverse Vesting Order (“**RVO**”) substantially in the form attached as tab 3 to the Motion Record of the Applicants, that among other things:
  - (a) approves the share subscription agreement dated September 3, 2025 (the “**Subscription Agreement**”) between Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd. (the “**Vendors**”), as vendors, and Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated, as purchaser (the “**Purchaser**”);
  - (b) approves the transactions contemplated in the Subscription Agreement (collectively, the “**Transactions**”), and authorizes the Vendors to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions;
  - (c) declares 1001343933 Ontario Inc. (“**ResidualCo**”) to be an applicant in these *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings;
  - (d) approves a sequence of steps that shall be deemed to have occurred upon delivery of a closing certificate by BDO Canada Limited (“**BDO**”) in its capacity as Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”), which time is referred to as the “**Closing Time**”;
  - (e) approves the release of all claims arising in connection with or relating to these CCAA proceedings, the Subscription Agreement, the consummation of the Transactions, and/or any closing document, agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or

pursuant to any of the foregoing (collectively, the “**Released Claims**”) as against (a) the current directors, officers, shareholders, employees, consultants, legal counsel and advisors of the Applicants; (b) the current directors, officers, shareholders, consultants, legal counsel and advisors to ResidualCo; (c) the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, and advisors; and (d) the Monitor and its legal counsel and their respective affiliates, directors, officers, partners, employees, and advisors (the persons listed in (a), (b), (c) and (d) being collectively, the “**Released Parties**”); provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for gross negligence, fraud or willful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of the Released Parties under, or in connection with, the Subscription Agreement;

- (f) approves the release of the current directors and officers of the Applicants (the “**Released D&Os**”) from the D&O Released Claims (as defined below), provided that such release shall not waive, discharge, release, cancel or bar any claim or liability (a) arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O; (b) that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or (c) the liabilities and obligations of Eugene Woodbridge with respect to the agreement between Eugene Woodbridge and the Bank of Montreal (“**BMO**”);
- (g) extends the stay of proceedings to October 31, 2025;
- (h) orders that no person shall be permitted to preserve or perfect a Lien Claim under the *Construction Act* on any Continuing Project Contracts in respect to services or work performed prior to the Filing Date (“**Pre-Filing Lien Claims**”),

and that any such Pre-Filing Lien Claims be and are hereby vacated and shall only be entitled to seek recovery on account of any Pre-Filing Lien Claims by way of a claim on the Lien Charge pursuant to and in accordance with the terms of the LRO and any other Order granted by the Court;

- (i) grants certain enhanced power to the Monitor including to perform any functions or duties the Monitor considers necessary or desirable to facilitate or assist the winding-down of ResidualCo and bringing these CCAA proceedings to an end;
- (j) approves the Fourth Report of the Monitor, to be filed (the "**Fourth Report**"), and the activities of the Monitor and its counsel described therein;
- (k) approves the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Clark Lonergan and Heather Fisher (the "**Fee Affidavits**"), each attached to the Fourth Report;
- (l) seals the Confidential Exhibit to this affidavit and the Confidential Appendix to the Fourth Report until the earlier of the closing of the Transactions or further order of the Court;
- (m) authorizes the Monitor to retain a termination reserve to fund the remainder of these CCAA proceedings; and
- (n) authorizes a distribution to BMO of the funds received by the Monitor in accordance with section 7.2(i) of the Subscription Agreement; and

2. such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

3. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Subscription Agreement and the Affidavit of Gene Woodbridge sworn September 3, 2025 (the “**Fifth Woodbridge Affidavit**”).

## **Background**

4. The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the “**Business**”).
5. EBCL primarily works for municipalities, but also works with a diverse range of other customers in the construction industry providing critical gas and electrical pipelines and water and waste management infrastructure.
6. EBCL experienced significant financial and operational challenges in the past year that resulted in an acute liquidity crisis. The financial challenges were associated with, among other things: (i) a rapid expansion of the Business that significantly increased the upfront capital required for operations; (ii) changes to the eligibility requirements of Ontario’s Housing-Enabling Water Systems Fund which delayed a majority of the Applicants’ 2024 projects; (iii) unprecedented issues with one of the Applicants’ infrastructure projects located in Caledon, Ontario; (iv) the shouldering of the upfront costs of certain insurance claims; and (v) the significant impact of tariffs on the construction industry generally.
7. As a result, on April 17, 2025, the Applicants sought and obtained an order (as amended, restated, or otherwise modified from time to time, the “**TARIO**”) under the CCAA from the Court.
8. Pursuant to the TARIO, the Court, among other things:

- (a) appointed BDO as Monitor of the Applicants;
  - (b) approved the engagement of Steinberg Advisory Corp., as Chief Restructuring Officer of the Applicants (the “**CRO**”);
  - (c) granted a third-party stay of proceedings, in favour of a related entity of the Applicants, Pennbridge Holdings Inc.;
  - (d) approved an interim financing loan agreement (the “**DIP Term Sheet**”) between the Applicants and the Bank of Montreal (in such capacity, the “**DIP Lender**”) pursuant to which the DIP Lender agreed to advance to the Applicants the principal amount of \$5.5 million;
  - (e) granted certain super-priority charges over all of the Applicants’ assets, properties and undertakings (the “**Property**”), namely:
    - (i) First - an administration charge in the amount of \$700,000 (“**Administration Charge**”);
    - (ii) Second - a charge in favour of the Purchaser in the maximum principal amount of \$5.5 million plus fees, costs, and interest with respect to the DIP Term Sheet; and
    - (iii) Third - a charge in favour of the Applicants’ directors and officers in the amount of \$400,000 (“**Directors’ Charge**”).
  - (f) stayed any person with recourse to a Performance Bond (as defined in my Initial Affidavit (as defined below)), including any person named as an owner or obligee under such bond, from enforcing or calling on the Performance Bond, except with the written consent of the Applicants and the Monitor.
9. At the initial hearing, the Court also granted a Lien Regularization Order (the “**LRO**”).

10. The Applicants commenced these CCAA proceedings to, among other things, achieve a comprehensive operational and financial restructuring plan that includes the implementation of the SISP, streamlining of operations, and restructuring unprofitable segments of the Business.

### **The SISP**

11. On May 28, 2025, the Court granted an order (“**SISP Approval Order**”) which, among other things:
  - (a) approved the sale and investment solicitation process attached as Schedule “A” to the SISP Approval Order (the “**SISP**”);
  - (b) approved the appointment of PricewaterhouseCoopers Corporate Finance Inc. as Sales Advisor (in such capacity, the “**Sales Advisor**”) to assist the Monitor of the Applicants and the Applicants in the implementation of the SISP;
  - (c) granted the Sales Advisor a charge (the “**Sales Advisor Charge**”), in the maximum amount of \$350,000; and
  - (d) authorized the Sales Advisor, the Monitor, and the Applicants to take any and all actions as may be necessary or desirable to implement and carry out the SISP.
12. The purpose of the SISP was to complement the Applicants’ ongoing operational restructuring efforts and to maximize value for the Applicants’ stakeholders by widely exposing the Applicants’ Business and Property to the market. The SISP provided a structured and orderly process for interested parties to perform due diligence and submit offers for a broad range of potential transactions (including a sale or recapitalization).
13. The SISP was designed as a two-phase sale process to be administered by the Court-appointed Monitor over approximately seven weeks.

14. During the implementation of the SISP, the stay of proceedings and the deadlines of the SISP were extended by the Monitor and a court order dated August 14, 2025 (the “**Stay Extension Order**”). The stay of proceedings was extended up to and including September 12, 2025.
15. Accordingly, the SISP contemplated the following key milestones and deadlines:

| <b>Milestone</b>   | <b>Deadline</b>   |
|--|---|
| Commence solicitation of interest from parties                 | As soon as practicable following the date of the SISP Approval Order. |
| Phase I Bid Deadline for LOIs                                  | June 27, 2025   |
| Phase II: Commencement of Due Diligence for Selected Bidders   | June 30, 2025   |
| Deadline for Binding Offers (“ <b>Phase II Bid Deadline</b> ”) | August 11, 2025   |
| Selection of Successful Bid (assuming no Auction)              | August 26, 2025   |
| Definitive Transaction Document                                | September 3, 2025   |
| Approval Motion  | Subject to availability of the Court                                  |
| “ <b>Target Closing Date</b> ” Deadline                        | September 15, 2025  |

16. The Sales Advisor administered the SISP, with the assistance of the Monitor and the Applicants (where appropriate), in accordance with the terms of the SISP Approval Order. Specifically, the Sales Advisor took the following steps on or before the Commencement Date of the SISP:
- (a) prepared a list of 126 known potential bidders (“**Known Parties**”), which included 59 strategic parties and 67 financial parties;

- (b) prepared a process summary (“**Teaser Letter**”) describing the SISP and a form of non-disclosure agreement (“**NDA**”); and
  - (c) prepared a virtual data room (“**VDR**”) containing due diligence documents in relation to the Applicants including the confidential information memorandum, financial statements, marketing material, corporate and legal information, and operational and logistical data.
- 17. On May 29, 2025, the Sales Advisor sent the Teaser Letter and NDA to each of the Known Parties.
- 18. Based on the outreach to the market, the Sales Advisor received executed NDAs from 23 parties and provided each of those parties with access to the VDR. The Sales Advisor and Monitor had active discussions with those potential bidders regarding the opportunity. The Applicants similarly dedicated significant time and resources responding to due diligence requests posed to them during the SISP.
- 19. In accordance with the SISP Approval Order, any interested party had until the Phase 1 Bid Deadline, being June 27, 2025, to submit a non-binding LOI under Phase 1 of the SISP.
- 20. Before the Phase I Bid Deadline, the management of EBCL (“**Management**”) disclosed their intention to submit a bid in the SISP. As a result, the Sales Advisor and the Monitor did not share any information with Management with respect to other SISP participants or bids.
- 21. On the Phase 1 Bid Deadline, four LOIs were received. In consultation with the Monitor, the Sales Advisor deemed all four LOIs to be Qualified Phase I Bids and advanced to Phase II.

22. During Phase II, all four bidders that submitted Qualified Phase I Bids continued their due diligence, including attending management meetings and site visits.
23. On the Phase II Bid Deadline, one offer was received from the Purchaser. The Sales Advisor and Monitor, in consultation with BMO, reviewed and assessed the bid, and on August 26, 2025, the Monitor declared the bid from the Purchaser as the Successful Bid.

### The Subscription Agreement

24. Extensive negotiations between counsel for each of the Monitor and the Purchaser - in consultation with BMO and the Vendors - resulted in the Subscription Agreement. The principal terms of the Subscription Agreement are summarized below:

| Term                         | Details  |
|------------------------------|--|
| <b>Seller</b>                | The Vendors  |
| <b>Purchaser</b>             | <p>Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated.</p> <p>Barrier Ridge Capital Inc. is a strategic purchaser of the Vendors. In addition to Barrier Ridge Capital Inc., management of the Vendors will own shares in the company to be incorporated as the purchaser in the Transactions. As a result, management will continue to be actively involved in the operations of the Business.</p>                            |
| <b>Transaction Structure</b> | <p>Reverse vesting structure by way of a share subscription agreement.</p> <p>All the Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities will be transferred to and vested in ResidualCo as part of the Closing Sequence. ResidualCo shall have no issued or outstanding shares.</p>   |
| <b>Purchased Assets</b>      | <p>The Vendors shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of the Vendors from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances ("<b>Purchased Shares</b>"). In addition to the Purchased Shares, the Retained Assets and Retained Liabilities will remain with the Vendors.</p> |

|                                    |   |
|------------------------------------|---|
| <p><b>Purchase Price</b></p>       | <p>The total aggregate consideration in respect of the Purchased Shares shall be equal the aggregate value of the amounts set out below and comprised of the following (the “<b>Purchase Price</b>”):</p> <ul style="list-style-type: none"> <li>(a) subject to the adjustment in Section 3.2, payment in cash of an amount under seal (the “<b>Cash Consideration</b>”) for the equipment of the Vendors;</li> <li>(b) payment of 50% of the Accounts Receivable derived from the Continuing Project Contracts up to a specific maximum amount as and when such Account Receivables are actually collected after the Closing Date. The Excluded Caledon AR shall not be included when calculating the Accounts Receivable;</li> <li>(c) an amount equal to the Cure Costs for the Retained Leases and the Retained Contracts as of the Closing Time;</li> <li>(d) an amount equal to \$250,000 on account of proceeds of litigation as between Monteith &amp; Sutherland Limited v. Novex Insurance Company bearing court file No: CV-24-4336-0000 as and when such proceeds are actually collected from and after the Closing Date (the “<b>Litigation Proceeds</b>”) and provided that the gross Litigation Proceeds available to the Vendors are in excess of \$500,000 and pursuant to which Monteith &amp; Sutherland Limited was engaged by EBCL on a construction project; and</li> <li>(e) the total obligations and indebtedness of the Retained Liabilities as of the Closing Time.</li> </ul> <p>There is a Purchase Price adjustment contemplated the circumstance where the DIP Facility is greater or less than \$5,500,000.</p> |
| <p><b>Deposit</b></p>              | <p>The Purchaser has paid a Deposit in accordance with the SISP.</p>  |
| <p><b>Employees</b></p>            | <p>The Purchaser will determine which employees it will assume and continue to employ prior to closing. The Purchaser presently intends to keep the majority of the Vendors’ employees.</p>   |
| <p><b>Retained Liabilities</b></p> | <ul style="list-style-type: none"> <li>• Wages, vacation pay, and benefit plans owing to any employee that continues employment with the Vendors after the Closing Time;</li> <li>• the mortgage and indebtedness of Yarbridge Holdings Inc. and Trolan Investments Ltd. to BDC;</li> <li>• ordinary course Post-Filing Trade Liabilities in respect of the Continuing Project Contracts that remain outstanding as at the Closing Time other than the Excluded Caledon AP;</li> <li>• the Retained Contracts and the Cure Costs and obligations of the Vendors under the Retained Contracts from and after the Closing Time other than the Excluded Caledon AP;</li> </ul>   |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>the Retained Contracts and the Cure Costs and obligations of the Vendors under the Retained Contracts from and after the Closing Time;</li> <li>the Retained Leases and the Cure Costs and obligations arising from or in connection with the performance of the Retained Leases, from and after the Closing Time; and</li> <li>Tax Liabilities of the Vendors for any period, or the portion thereof, beginning on or after the Closing Date.</li> </ul>   |
| <b>Excluded Assets and Excluded Liabilities</b> | <p>The Excluded Assets include the (i) Tax records, (ii) books and records related to the Excluded Liabilities and Excluded Assets, (iii) Excluded Contracts, (iv) Excluded Leases, and (iv) in respect of the Caledon Project, all uncollected accounts receivable that have been invoiced by the applicable Vendor prior to the Closing Date relating to all work completed prior to the Closing Date by any of the Vendors.</p> <p>The Excluded Liabilities are all Claims and all debts, obligations and liabilities of the Vendors or any predecessors thereof except for the Retained Liabilities. For clarity this includes but is not limited to any liabilities: (i) relating to or under the Excluded Contracts and Excluded Assets, (ii) relating to or under the Excluded Leases including any claims related to the disclaimer of leases, and (iii) for all Terminated Employees.</p> |
| <b>Regulatory Approvals</b>                     | <p>Due to the structure of the Transactions, it is anticipated that all licences, certifications, and regulatory approvals will remain in place, and no additional regulatory approvals will be necessary. No <i>Competition Act</i> or other statutory approvals are needed.</p>  |
| <b>Key Conditions to Closing</b>                | <p>The key conditions to closing include:</p> <ul style="list-style-type: none"> <li>The Subscription Agreement shall be the Successful Bid (as determined pursuant to the SISP).</li> <li>The RVO shall be granted.</li> <li>There is no material adverse change.</li> <li>BMO shall have released the personal guarantors from the BMO indebtedness on terms satisfactory to the Purchaser, BMO and the personal guarantors.</li> <li>The mortgages of BDC shall remain in place in terms satisfactory to the Purchaser and BDC.</li> <li>The BMO Leases shall be paid out by no later than November 1, 2025.</li> <li>Management and executives of the Vendors remain employed.</li> </ul>  |
| <b>Closing Date</b>                             | <p>No later than five (5) Business Days after the conditions to closing</p>  |

|  |  |
|--|--|
|  | <p>have been satisfied or waived (the “<b>Closing Date</b>”).</p> <p>The Closing Date shall be no later than the Outside Date of September 15, 2025 or such later date agreed to by the Vendors and the Purchaser in writing in consultation with the Monitor.</p> |
|--|--|

### **Approval of the Transactions**

25. The Applicants seek the RVO in order to approve the Subscription Agreement and Transactions whereby the Purchaser will acquire the Purchased Shares in the Vendor with the Vendors holding only the Retained Assets and the Retained Liabilities.
26. The Transactions use a reverse vesting structure to effect the transfer of the Purchased Shares to the Purchaser and the transfer to ResidualCo of the Excluded Assets and Excluded Liabilities. The reverse vesting structure is necessary to, among other things:
- (a) permit the Vendors to maintain their licenses, certifications and permits, which cannot be transferred to a third party;
  - (b) maintain the Vendors’ tax attributes, which includes the Vendors’ operating losses; and
  - (c) maintain the Retained Contracts and Retained Leases without the uncertainty, delays and costs of needing to assign each of them through negotiated arrangements with each counterparty.
27. The Subscription Agreement and the proposed Transactions provide the best outcome for their creditors in the circumstances given that, among other things:
- (a) the Subscription Agreement is the product of a broad, transparent, and fair Court-approved SISP and the efforts of the Applicants and the Monitor to consummate a value maximizing transaction;

- (b) the Subscription Agreement is the best offer obtained in the SISP to maximize value for the Vendors' stakeholders;
- (c) the Vendor will continue operating as a going concern which will preserve employment for the majority of the Vendors' 77 employees, as well as the ongoing relationships with suppliers and customers;
- (d) the Purchaser will pay the Cash Consideration for the equipment of the Vendors on closing;
- (e) the Vendors will continue the construction and completion of all of its bonded construction projects, thereby minimizing losses to Aviva and the project owners;
- (f) the Purchaser will pay 50% of the Accounts Receivable derived from the Continuing Project Contracts up to a maximum amount set out in the Subscription Agreement;
- (g) the Purchaser will assume the mortgage and indebtedness of the Vendors owing to the Business Development Bank of Canada;
- (h) all Cure Costs under the Retained Contracts and Retained Leases will be assumed and paid in cash by the Purchaser;
- (i) the consideration to be received for the Purchased Shares is reasonable and fair, taking into account their market value and the broad canvassing of the potentially interested parties during the pre-filing strategic process and the SISP;
- (j) the Subscription Agreement is supported by the Monitor and was developed in consultation with the Vendors' senior secured creditors; and

- (k) closing of the Transactions require only customary closing conditions and requisite approvals.
28. The Subscription Agreement treats the stakeholders of the Vendors no differently than had the Transactions been structured as a “traditional” approval and vesting transaction rather than a “reverse” vesting transaction. Priorities remain unaffected and parties with Retained Contracts and Retained Leases will be paid their Cure Costs (if any).

#### **Addition of ResidualCo as an Applicant to these CCAA Proceedings**

29. Pursuant to the RVO. The Applicants seek to add ResidualCo as an applicant in these proceedings in order to permit the vesting out of the Excluded Assets and Excluded Liabilities. ResidualCo is incorporated as a company under the laws of the Province of Ontario and has no issued share capital.

#### **Vesting of excluded Assets and Excluded Liabilities in ResidualCo**

30. Further to the RVO, the Applicants seek that all Excluded Assets and Excluded Liabilities shall vest absolutely in ResidualCo and cease being obligations of the Vendors. The RVO further provides that any related “Excluded Liability Claim” shall be released and discharged as against the Vendors and their Property at the Closing Time.
31. The vesting of the Excluded Assets and Excluded Liabilities in ResidualCo is condition of the Purchaser as part of the Transactions. No creditors of the Vendors are prejudiced by the reverse vesting structure relative to the typical approval and vesting structure as their position and recovery in the circumstances would be the same.

### **Cancellation of Existing Equity Interests**

32. The Applicants seek that all “Existing Shares” pursuant to the RVO shall be deemed terminated and cancelled without consideration. The cancellation of all Existing Shares is required by the Purchaser as part of its purchase of the Vendors.
33. Cancelling the Existing Shares without consideration does not create additional prejudice, as no alternative transaction would provide recovery for equity holders. Given that creditor claims cannot be paid in full, recovery on equity is not possible. Moreover, if the Transactions are not approved, the Vendors would likely be forced into bankruptcy, in which case equity interests would remain worthless and subordinate to all other claims.

### **Granting of the Releases**

34. The Applicants seek two releases (the “**Releases**”) as follows:
  - (a) the Released Parties (being the current directors, officers, shareholders, employees, consultants, legal counsel and advisors of the Applicants and ResidualCo; the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, and advisors; and the Monitor and its legal counsel and their respective affiliates, directors, officers, partners, employees, and advisors) from the Released Claims; and
  - (b) the Released D&Os (being current directors and officers of the Applicants) from any and all claims that any person may have or be entitled to assert against the Released D&Os based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to commencement of these CCAA proceedings in respect of the Applicants, the Business, operations, assets, property and affairs of the Applicants and/or these CCAA proceedings (collectively, the “**D&O Released Claims**”).

35. The Releases are being sought in order to achieve certainty and finality for the Released Parties and the Released D&Os in the most efficient and appropriate manner given the circumstances.
36. The Applicants believe that the Releases sought are appropriate, given the significant and material contributions of the Released Parties and Released D&Os in connection with these CCAA proceedings and the Transactions, which will allow for the Applicants to continue their operations as a going concern.
37. The Releases will ensure that the Released D&Os are not disincentivized from remaining in their respective positions after the Applicants exit CCAA protection due to concerns about meritless claims or personal liability, as this would destabilize the Business and negatively affect value to the Purchaser.
38. The scope of the Releases is closely tied to the CCAA proceedings and the Transactions.
39. The Releases are sufficiently narrow in that they do not waive or bar any claim or liability arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O or any claims that section 5.1 of the CCAA precludes from being released. The release of the D&O Released Claims also does not release the liabilities and obligations of Eugene Woodbridge with respect to the agreement between Eugene Woodbridge and BMO.
40. The Monitor is supportive of the Releases.

#### **Extension of the Stay Period**

41. The Stay Period currently expires on September 12, 2025. The Applicants seek an extension of the Stay Period until November 1, 2025.

42. The extension of the Stay Period is critical to providing the Applicants the breathing room to close the Transactions, which will maximize the realization of the Business and preserve its going-concern operations for the benefit of creditors and stakeholders. It will also allow the Monitor to take any administrative steps necessary to conclude these CCAA proceedings.
43. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize the Business, prepare and implement the SISF, and negotiate and consummate the Transactions.
44. The Applicants' prior cash flow forecast demonstrates that the Applicants have sufficient liquidity to operate through the proposed Stay Period.
45. There is no prejudice by the extension of the Stay Period.
46. The Monitor is supportive of the proposed extension of the Stay Period.

#### **Enhanced Powers of the Monitor**

47. To facilitate and streamline the process of winding down ResidualCo and completing these CCAA proceedings, the RVO seeks to grant the Monitor with certain enhanced powers including empowering the Monitor to cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo, the distribution of the proceeds of ResidualCo's property, or any other related activities.

#### **Approval of the Fourth Report and Fees of the Monitor and its Counsel**

48. The Applicants seek approval of the Fourth Report and the fees and activities of the Monitor and its counsel described therein.

49. The Fourth Report extensively describes the Monitor and its counsel's actions and activities. All actions and activities of the Monitor have been undertaken in accordance with the Initial Order and in the best interests of the Applicants.
50. The Applicants respectfully request that this Court approve the activities, actions, conduct, of the Monitor and its counsel as described in the Fourth Report, as well as the Monitor and its counsel's fees as set out in the Fee Affidavits.

### **Preventing the Registration of Liens on Continuing Project Contracts for Pre-Filing Amounts**

51. The Applicants seek an order preventing any person from preserving or perfecting a Lien Claim under the *Construction Act* on any Continuing Project Contracts with respect to services or work performed prior to the Filing Date. Such an order is necessary as the Purchaser will not be responsible for pre-filing claims given such claims will be vested out to ResidualCo.

### **Sealing Provisions**

52. The Applicants seek to seal the Confidential Exhibit to the Fifth Woodbridge Affidavit, being an unredacted copy of the Subscription Agreement, as well as the Confidential Appendix to the Fourth Report.
53. The disclosure of the confidential information prior to closing of the Transactions would be highly prejudicial to any supplementary marketing efforts that may be required if the Transactions fail to close, as it would undermine the integrity of the process and hinder the maximization of value to the detriment of stakeholders.

54. The sealing order sought is limited in time until the closing of the Transactions or further order of this Court. As such, the sealing order appropriately balances the need to protect the integrity of the sale process with the importance of a public court process.

#### **Other Grounds**

55. The provisions of the CCAA, including sections 5.1, 11 and 36, and the inherent and equitable jurisdiction of this Honourable Court.
56. Rules 1.04, 2.01, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
57. Such further and other grounds as counsel may advise and this Honourable Court may permit.

#### **THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

58. The Fifth Woodbridge Affidavit and the exhibits annexed thereto;
59. The Fourth Report of the Monitor, to be filed; and
60. Such further and other materials as counsel may advise and as this Honourable Court may permit.

September 3, 2025

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*  
ACT, R.S.C. 1985, c.C-36, AS AMENDED

Court File No. CV-25-00741419-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED ET AL.

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(Approval and Reverse Vesting Order)  
(Returnable September 11, 2025)**

**RECONSTRUCT LLP**

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**TAB 2**

Court File No. CV-25-00741419-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED**

Applicants

**AFFIDAVIT OF EUGENE WOODBRIDGE**

(Sworn September 3, 2025)

I, **EUGENE WOODBRIDGE**, of the City of Oakville, in the province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Chief Executive Officer of Earth Boring Co. Limited ("**EBCL**"). I have been in this role since 2005 and previously served as Vice President of EBCL beginning in 1998. I am also the President of Yarbridge Holdings Inc. ("**Yarbridge**"), and the Vice President of Yarfield Services Limited ("**Yarfield**") and Trolan Investments Ltd. ("**Trolan**", together with EBCL, Yarbridge, and Yarfield, the "**Applicants**"). I am also a director of each of the Applicants. Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I have stated the source of such information and verily believe it to be true.

2. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Share Subscription Agreement dated September 3, 2025 (the "**Subscription Agreement**")

between Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd. (collectively, the “**Vendors**”), as vendors, and Barrier Ridge Capital Inc., on behalf of an in trust for a corporation to be incorporated (the “**Purchaser**”), as purchaser.

3. This affidavit is sworn in support of the Applicants’ motion for an approval and reverse vesting order (“**RVO**”) in the form of the draft order included at tab 3 of the Applicants’ motion record, which, among other things:

- (a) approves the Subscription Agreement between the Vendors and the Purchaser;
- (b) approves the transactions contemplated in the Subscription Agreement (collectively, the “**Transactions**”), and authorizes the Vendors to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions;
- (c) declares 1001343933 Ontario Inc. (“**ResidualCo**”) to be an applicant in these *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings;
- (d) approves a sequence of steps that shall be deemed to have occurred upon delivery of a closing certificate by BDO Canada Limited (“**BDO**”) in its capacity as Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”), which time is referred to as the “**Closing Time**”;
- (e) approves the release of all claims arising in connection with or relating to these CCAA proceedings, the Subscription Agreement, the consummation of the Transactions, and/or any closing document, agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing (collectively, the “**Released Claims**”) as against (a) the current directors, officers, shareholders, employees, consultants, legal counsel

and advisors of the Applicants; (b) the current directors, officers, shareholders, consultants, legal counsel and advisors to ResidualCo; (c) the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, and advisors; and (d) the Monitor and its legal counsel and their respective affiliates, directors, officers, partners, employees, and advisors (the persons listed in (a), (b), (c) and (d) being collectively, the “**Released Parties**”); provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for gross negligence, fraud or willful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of the Released Parties under, or in connection with, the Subscription Agreement;

- (f) approves the release of the current directors and officers of the Applicants (the “**Released D&Os**”) from the D&O Released Claims (as defined below), provided that such release shall not waive, discharge, release, cancel or bar any claim or liability (a) arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O; (b) that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or (c) the liabilities and obligations of Eugene Woodbridge with respect to the agreement between Eugene Woodbridge and the Bank of Montreal (“**BMO**”);
- (g) extends the Stay of Proceedings (as defined herein) to October 31, 2025;
- (h) orders that no person shall be permitted to preserve or perfect a Lien Claim (as defined below) under the Construction Act on any Continuing Project Contracts in respect to services or work performed prior to the Filing Date (“**Pre-Filing Lien Claims**”), and that any such Pre-Filing Lien Claims be and are hereby vacated and shall only be entitled to seek recovery on account of any Pre-Filing Lien Claims by

way of a claim on the Lien Charge pursuant to and in accordance with the terms of the LRO and any other Order granted by the Court;

- (i) grants certain enhanced power to the Monitor including to perform any functions or duties the Monitor considers necessary or desirable to facilitate or assist the winding-down of ResidualCo and bringing these CCAA proceedings to an end;
- (j) approves the Fourth Report of the Monitor, to be filed (the "**Fourth Report**"), and the activities of the Monitor and its counsel described therein;
- (k) approves the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Clark Lonergan and Heather Fisher (the "**Fee Affidavits**"), each attached to the Fourth Report;
- (l) seals the Confidential Exhibit to this affidavit and the Confidential Appendix to the Fourth Report until the earlier of the closing of the Transactions or further order of the Court;
- (m) authorizes the Monitor to retain a termination reserve to fund the remainder of these CCAA proceedings; and
- (n) authorizes a distribution to BMO of the funds received by the Monitor in accordance with section 7.2(i) of the Subscription Agreement.

4. As more particularly described herein, the Transactions will result in the continuation of the Vendors as a wholly-owned subsidiary of the Purchaser with a clean balance sheet basis and absent those liabilities and obligations which are the subject of the RVO.

5. At its core, the Transaction seeks to preserve the value of the Vendors' critical certifications, construction project contracts, and tax losses, while enabling the Vendors to have

access to additional funding to satisfy ordinary course liabilities, including trade liabilities under its construction project contracts, which will preserve the going concern value of their business.

## II. BACKGROUND OF THE CCAA PROCEEDING

6. The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the “**Business**”).

7. EBCL primarily works for municipalities but also works with a diverse range of other customers in the construction industry, providing critical gas and electrical pipelines, and water and waste management infrastructure.

8. The company experienced significant financial and operational challenges in the past year associated with, among other things: (i) a rapid expansion of the Business that significantly increased the upfront capital required for operations; (ii) changes to the eligibility requirements of Ontario’s Housing-Enabling Water Systems Fund, which delayed a majority of the Applicants’ 2024 projects; (iii) unprecedented issues with one of the Applicants’ infrastructure projects located in Caledon, Ontario; (iv) the shouldering of the upfront costs of certain insurance claims; and (v) the significant impact of tariffs on the construction industry generally.

9. As a result of these challenges and an acute liquidity crisis, on April 17, 2025, the Applicants obtained an order (as amended, restated, or otherwise modified from time to time, the “**TARIO**”) under the CCAA from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the TARIO is attached as **Exhibit “A”**.

10. The TARIO, among other things:

- (a) appointed BDO as Monitor of the Applicants;

- (b) approved the engagement of Steinberg Advisory Corp., as Chief Restructuring Officer of the Applicants (the “**CRO**”);
- (c) granted a stay of all proceedings and remedies taken, or that might be taken, in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”) to August 15, 2025;
- (d) granted a third-party stay of proceedings, in favour of a related entity of the Applicants, Pennbridge Holdings Inc.;
- (e) approved an interim financing loan agreement (the “**DIP Term Sheet**”) between the Applicants and BMO (in such capacity, the “**DIP Lender**”) pursuant to which the DIP Lender agreed to advance to the Applicants the principal amount of \$5.5 million;
- (f) granted the following charges, with the priority amongst them as set out below, which charges shall rank in priority to all other security interests, trusts, liens, charges, and encumbrances in favour of any person:
  - i. First – an “**Administration Charge**” against all present and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situated, of the Applicants, including all proceeds thereof (the “**Property**”), in the amount of \$700,000, as security for the payment of professional fees and disbursements;
  - ii. Second – a “**DIP Lender’s Charge**” against the Property of the Applicants as security for the Applicants’ obligations under the DIP Term Sheet, in the maximum principal amount of \$5.5 million, plus fees and interest, subject only to the mortgage security granted to the Business Development Bank of

Canada (“**BDC**”) by Trolan and Yarbridge with respect to the Burlington Property and the Brampton Property (each as defined in the TARIO); and

- iii. Third – a charge against the Property (“**Director’s Charge**”) as security for the obligation of the Applicants to indemnify its directors and officers from the obligations and liabilities that they may incur as directors and officers after the commencement of the within proceeding, in the maximum principal amount of \$400,000. With respect to real property owned by each of Trolan and Yarbridge, the Director’s Charge ranks ahead of the interests of the Business Development Bank of Canada and the DIP Lender’s Charge in the maximum amount of \$100,000 on each Property; and

- (g) stayed any person with recourse to a Performance Bond (as defined in my Initial Affidavit (as defined below)), including any person named as an owner or obligee under such bond, from enforcing or calling on the Performance Bond, except with the written consent of the Applicants and the Monitor.

11. At the initial hearing, the Court also granted a Lien Regularization Order (the “**LRO**”). A copy of the LRO is attached as **Exhibit “B.”** The LRO, among other things:

- (a) stayed the rights of any person who supplied services and/or materials to the Applicants solely with respect to certain construction projects to which the Applicants are a contracting party, and which are listed in Schedule “A” to the LRO (the “**Continuing EBCL Projects**”), to preserve, maintain, perfect, or register liens (each, a “**Lien Claim**” and such person asserting a Lien Claim, a “**Lien Claimant**”), including by way of a notice of lien pursuant to and in accordance with the *Construction Act* R.S.O. 1990, c. C.30 (the “**Construction Act**”), other than as permitted by the LRO;

- (b) granted a charge over the Applicants' property in the applicable Continuing EBCL Project in favour of a Lien Claimant equivalent to, and only to the extent of, any security that, but for this proceeding, would otherwise be available under the *Construction Act*, as set out in and pursuant to the procedural requirements of the LRO (the "**Lien Charge**"); and
- (c) declared that the priority of the Lien Charge: (i) shall rank subordinate to the Directors' Charge; (ii) relative to the other Lien Charges, shall be equivalent to the priority granted under the *Construction Act*; and (iii) with respect to other creditors of the Applicants, shall, subject to any orders granted in these proceedings, have priority in accordance with the Federal laws of Canada and the Province of Ontario.

12. In support of the initial hearing and the LRO, I swore an affidavit dated April 16, 2025 (the "**Initial Affidavit**"), which details, among other things, the Applicants' business and financial circumstances, the events leading up to and resulting in the Applicants' insolvency, and the Applicants' need for relief under the CCAA to conduct an operational and financial restructuring. A copy of the Initial Affidavit (without exhibits) is attached as **Exhibit "C."**

13. On May 28, 2025, the Court granted an order (the "**SISP Approval Order**"), which, among other things:

- (a) approved a sale and investment solicitation process ("**SISP**");
- (b) approved the appointment of PricewaterhouseCoopers Corporate Finance Inc. as Sales Advisor (in such capacity, the "**Sales Advisor**") to assist the Monitor and the Applicants in the implementation of the SISP;

- (c) granted the Sales Advisor a charge (the “**Sales Advisor Charge**”), in the maximum amount of \$400,000, as security for the amounts owed to the Sales Advisor; and
- (d) authorized the Sales Advisor, the Monitor, and the Applicants to take any and all actions as may be necessary or desirable to implement and carry out the SISP.

A copy of the SISP Approval Order is attached as **Exhibit “D”**.

14. On August 14, 2025, the Court granted an order (the “**Stay Extension Order**”), which, among other things:

- (a) extended the Stay of Proceedings to September 12, 2025; and
- (b) extended certain of the timelines of the SISP.

### **III. OVERVIEW OF THE APPLICANTS’ ACTIVITIES SINCE THE STAY EXTENSION ORDER**

15. Since the issuance of the Stay Extension Order on August 14, 2025, the Applicants, with the assistance of the Monitor and the CRO, have acted in good faith and with due diligence to continue to stabilize the Business and effect a viable restructuring by, among other things:

- (a) continuing operations and construction on the Continuing EBCL Projects;
- (b) corresponding with project owners and general contractors with respect to the CCAA proceeding;
- (c) corresponding and negotiating with project owners and general contractors regarding unpaid accounts receivable;

- (d) assisting the Monitor and the Sales Advisor in the implementation of the SISP; and
- (e) working with Aviva Insurance Company of Canada (“**Aviva**”), the Applicants’ construction surety, with respect to projects that are bonded and subject to subcontractor claims.

#### **IV. THE SISP**

16. A primary objective of these CCAA proceedings was to continue the pre-filing sale process commenced by the Applicants. As a result, the Applicants developed the SISP, in consultation with the Monitor, the CRO, and the DIP Lender.

##### **A. Overview of the SISP**

17. The SISP was structured as a two-phase sale and investment solicitation process to be administered by the Sales Advisor, in consultation with the Monitor.

18. Bidders had the opportunity to submit a bid in the form of either a purchase or an investment in the Applicants. Although all the Applicants’ Property was being offered for sale en bloc, proposals in respect of only a portion of the Property were also accepted for consideration.

19. The timeline of the SISP was initially seven weeks, but was extended to approximately eleven weeks pursuant to the Stay Extension Order, with the resultant key milestones and deadlines:

| <b>Milestone</b>  | <b>Deadline</b>   |
|---|---|
| Commence solicitation of interest from parties                  | As soon as practicable following the date of the SISP Approval Order. |
| Phase I Bid Deadline for LOIs (“ <b>Phase I Bid Deadline</b> ”) | June 27, 2025   |

|  |                                      |
|--|--------------------------------------|
| Phase II: Commencement of Due Diligence for Selected Bidders   | June 30, 2025                        |
| Deadline for Binding Offers (“ <b>Phase II Bid Deadline</b> ”) | August 11, 2025                      |
| Selection of Successful Bid (assuming no auction)              | August 26, 2025                      |
| Definitive Transaction Document                                | September 3, 2025                    |
| Approval Motion  | Subject to availability of the Court |
| Target Closing Date  | September 15, 2025                   |

20. During phase I of the SISP (“**Phase I**”), the Sales Advisor, in consultation with the Monitor, solicited non-binding letters of intent (“**LOIs**”) from interested parties to acquire or refinance the Business and/or Property of the Applicants. After receiving the LOIs, the Sales Advisor, in consultation with the Monitor, assessed the LOIs to determine which bids were “**Qualified Phase I Bids**” and which bidders could move forward to participate in Phase II of the SISP (“**Phase II**”).

21. Phase II of the SISP called for either a “**Qualified Purchase Bid**” or “**Qualified Investment Bid**,” both of which constituted a “**Phase II Bid**.” If a Phase II Bid met the Phase II Bid Criteria (as defined in the SISP Approval Order), as determined by the Sales Advisor, in consultation with the Monitor and the DIP Lender, then such Phase II Bid was deemed to be a “**Qualified Phase II Bid**.”

22. Following the Phase II Bid deadline, the Monitor, in consultation with the Sales Advisor and the DIP Lender, could, but was not obligated to, choose to accept the bid that was in the best interests of the Applicants’ stakeholders (the “**Successful Bid**”) and to take such steps as necessary to finalize and complete an agreement for the Successful Bid.

23. Any shareholder or director of the Applicants (each an “**Insider**”) was entitled to submit a bid in the SISP, provided such intention to bid was communicated to the Monitor in writing by no later than June 19, 2025 (one day before the non-binding agreements were originally due). In the event an Insider submitted a bid in the SISP, the Sales Advisor and the Monitor would not share any information with the Insider with respect to the SISP and, accordingly, were not required to consult with the Applicants on the SISP or any submitted bid.

24. Further details on the SISP were detailed in my affidavit dated May 23, 2025 (the “**SISP Affidavit**”), which I swore in support of the SISP Approval Order. A copy of the SISP Affidavit (without exhibits) is attached as **Exhibit “E”**.

## **B. Implementation of the SISP**

### Phase 1

25. The Sales Advisor, with the assistance of the Applicants (as and when appropriate) and the Monitor, implemented the SISP in accordance with the terms of the SISP Approval Order.

26. The Sales Advisor commenced the SISP by emailing an initial offering summary and non-disclosure agreement (“**NDA**”) to approximately 126 prospective bidders about sale and investment opportunity. The prospective bidders included 59 strategic potential buyers and 67 financial potential buyers.

27. As a result of these marketing efforts, 23 parties executed NDAs and received access to a virtual data room (the “**VDR**”). The VDR contained due diligence documents, including a confidential information memorandum, financial statements, marketing material, corporate and legal information, and operational and logistical data.

28. The Applicants understand that the Sales Advisor had multiple discussions with possible bidders regarding potential transactions during Phase I of the SISP.

29. Given the active participation of parties in the VDR and as permitted by section 12 of the SISP, the Monitor exercised its reasonable business judgment to extend the Phase I Bid Deadline by seven days to June 27, 2025.

30. Prior to the Phase I Bid Deadline, the management of EBCL (“**Management**”) disclosed their intention to submit a bid in the SISP. As a result, thereafter the Sales Advisor and the Monitor did not share any information with Management with respect to other SISP participants or bids.

31. On the Phase I Bid Deadline, the Sales Advisor received four LOIs. In consultation with the Monitor, the Sales Advisor reviewed the LOIs to determine if they were Qualified Phase I Bids that were compliant with the criteria in the SISP. All four LOIs were deemed to be Qualified Phase I Bids and were permitted to advance to Phase II.

### Phase 2

32. During Phase II, all four bidders that submitted Qualified Phase I Bids continued their due diligence, including attending management meetings and site visits.

33. I am advised by the Sales Advisor that, in consultation with the Applicants, it responded to a significant number of due diligence requests throughout Phase II. The Sales Advisor was a conduit for all information between the Applicants and any interested parties.

34. At the request of certain Qualified Phase I Bidders, and in accordance with the SISP, the Monitor determined that an extension of the Phase II Bid Deadline and subsequent SISP deadlines was necessary and appropriate in order to preserve a competitive and effective process. Accordingly, the Phase II Bid Deadline was extended by approximately a further two weeks to August 11, 2025.

35. On the Phase II Bid Deadline, only one binding offer was received which was the offer from the Purchaser.

36. The Sales Advisor and Monitor, in consultation with the DIP Lender, reviewed and assessed the bid in the context of the criteria specified in paragraph 49 of the SISP. Furthermore, the DIP Lender exercised its discretion under the Stay Extension Order to extend the SISP timelines to allow the DIP Lender time to assess and negotiate the terms of the offer. As such, the DIP Lender spent several weeks negotiating with the Purchaser as to terms that were acceptable to it as the senior secured lender. Following these negotiations, with the consent of the DIP Lender, the Monitor declared the bid from the Purchaser as the Successful Bid.

## V. THE TRANSACTIONS

37. The principal terms of the Subscription Agreement are summarized below. A copy of the Subscription Agreement, with the purchase price redacted, is attached hereto as **Exhibit “F”**. An unredacted copy of the Subscription Agreement is attached hereto as **Confidential Exhibit “1”**.

| Term                         | Details  |
|------------------------------|--|
| <b>Seller</b>                | The Vendors  |
| <b>Purchaser</b>             | <p>Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated.</p> <p>Barrier Ridge Capital Inc. is a strategic purchaser of the Vendors. In addition to Barrier Ridge Capital Inc., management of the Vendors will own shares in the company to be incorporated as the purchaser as part of the Transaction. As a result, management will continue to be actively involved in the operations of the Business.</p> |
| <b>Transaction Structure</b> | <p>Reverse vesting structure by way of a share subscription agreement.</p> <p>All the Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities will be transferred to and vested in ResidualCo as</p>  |

|                                |   |
|--------------------------------|---|
|                                | <p>part of the Closing Sequence. ResidualCo shall have no issued or outstanding shares.</p>   |
| <p><b>Purchased Assets</b></p> | <p>The Vendors shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of the Vendors from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances (“<b>Purchased Shares</b>”). In addition to the Purchased Shares, the Retained Assets and Retained Liabilities will remain with the Vendors.</p>  |
| <p><b>Purchase Price</b></p>   | <p>The total aggregate consideration in respect of the Purchased Shares shall be equal the aggregate value of the amounts set out below and comprised of the following (the “<b>Purchase Price</b>”):</p> <ul style="list-style-type: none"> <li>(a) subject to the adjustment in Section 3.2, payment in cash of an amount under seal (the “<b>Cash Consideration</b>”) for the equipment of the Vendors;</li> <li>(b) payment of 50% of the Accounts Receivable derived from the Continuing Project Contracts up to a specific maximum amount as and when such Account Receivables are actually collected after the Closing Date. The Excluded Caledon AR shall not be included when calculating the Accounts Receivable;</li> <li>(c) an amount equal to the Cure Costs for the Retained Leases and the Retained Contracts as of the Closing Time;</li> <li>(d) an amount equal to \$250,000 on account of proceeds of litigation as between Monteith &amp; Sutherland Limited v. Novex Insurance Company bearing court file No: CV-24-4336-0000 as and when such proceeds are actually collected from and after the Closing Date (the “<b>Litigation Proceeds</b>”) and provided that the gross Litigation Proceeds available to the Vendors are in excess of \$500,000 and pursuant to which Monteith &amp; Sutherland Limited was engaged by EBCL on a construction project; and</li> <li>(e) the total obligations and indebtedness of the Retained Liabilities as of the Closing Time.</li> </ul> <p>There is a Purchase Price adjustment contemplated in circumstances where the DIP Facility is greater or less than \$5,500,000. The Applicants and the Monitor anticipate the DIP to remain fully outstanding at \$5,500,000.</p> |
| <p><b>Deposit</b></p>          | <p>The Purchaser has paid a Deposit in accordance with the SISP.</p>  |

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|--|---|
| <p><b>Employees</b></p>                                | <p>The Purchaser will determine which employees it will assume and continue to employ prior to closing. The Purchaser presently intends to keep the majority of the Vendors' employees.</p>   |
| <p><b>Retained Liabilities</b></p>                     | <ul style="list-style-type: none"> <li>• Wages, vacation pay, and benefit plans owing to any employee that continues employment with the Vendors after the Closing Time;</li> <li>• the mortgage and indebtedness of Yarbridge Holdings Inc. and Trolan Investments Ltd. to BDC;</li> <li>• ordinary course Post-Filing Trade Liabilities in respect of the Continuing Project Contracts that remain outstanding as at the Closing Time other than the Excluded Caledon AP;</li> <li>• the Retained Contracts and the Cure Costs and obligations of the Vendors under the Retained Contracts from and after the Closing Time other than the Excluded Caledon AP;</li> <li>• the Retained Leases and the Cure Costs and obligations arising from or in connection with the performance of the Retained Leases, from and after the Closing Time; and</li> <li>• Tax Liabilities of the Vendors for any period, or the portion thereof, beginning on or after the Closing Date.</li> </ul> |
| <p><b>Excluded Assets and Excluded Liabilities</b></p> | <p>The Excluded Assets include the (i) Tax records, (ii) books and records related to the Excluded Liabilities and Excluded Assets, (iii) Excluded Contracts, (iv) Excluded Leases, and (iv) in respect of the Caledon Project, all uncollected accounts receivable that have been invoiced by the applicable Vendor prior to the Closing Date relating to all work completed prior to the Closing Date by any of the Vendors.</p> <p>The Excluded Liabilities are all Claims and all debts, obligations and liabilities of the Vendors or any predecessors thereof except for the Retained Liabilities. For clarity this includes but is not limited to any liabilities: (i) relating to or under the Excluded Contracts and Excluded Assets, (ii) relating to or under the Excluded Leases including any claims related to the disclaimer of leases, and (iii) for all Terminated Employees.</p>  |
| <p><b>Regulatory Approvals</b></p>                     | <p>Due to the structure of the Transactions, it is anticipated that all licences, certifications, and regulatory approvals will remain in place, and no additional regulatory approvals will be necessary. No <i>Competition Act</i> or other statutory approvals are needed.</p>   |

|   |   |
|---|---|
| <p><b>Key Conditions to Closing</b></p> | <p>The key conditions to closing include:</p> <ul style="list-style-type: none"> <li>• The Subscription Agreement shall be the Successful Bid (as determined pursuant to the SISP).</li> <li>• The RVO shall be granted.</li> <li>• There is no material adverse change.</li> <li>• BMO shall have released the personal guarantors from the BMO indebtedness on terms satisfactory to the Purchaser, BMO and the personal guarantors.</li> <li>• The mortgages of BDC shall remain in place in terms satisfactory to the Purchaser and BDC;</li> <li>• The BMO Leases shall be paid out by no later than November 1, 2025.</li> <li>• Management and executives of the Vendors remain employed.</li> </ul> |
| <p><b>Closing Date</b></p>              | <p>No later than five (5) Business Days after the conditions to closing have been satisfied or waived (the “<b>Closing Date</b>”).</p> <p>The Closing Date shall be no later than the Outside Date of September 15, 2025 or such later date agreed to by the Vendors and the Purchaser in writing in consultation with the Monitor.</p>   |

**A. Outcome of the Transactions**

38. In accordance with the terms of the Subscription Agreement, should the Transactions be approved and the RVO be granted, the Transactions will result in the following:

- (a) the Vendors will continue operating as a going concern which will preserve employment for the majority of the Vendors’ 77 employees, as well as the ongoing relationships with suppliers and customers, and permit the Vendors to complete the 18 Continuing Project Contracts;
- (b) the Vendors will continue the construction and completion of all of its bonded construction projects, thereby minimizing losses to Aviva and the project owners;

- (c) the Purchaser will pay the Cash Consideration for the equipment of the Vendors on closing;
- (d) the Purchaser will pay 50% of the Accounts Receivable derived from the Continuing Project Contracts up to a maximum amount set out in the Subscription Agreement;
- (e) the Purchaser will assume the mortgage and indebtedness of Yarbridge and Trolan owing to the BDC;
- (f) all Cure Costs under the Retained Contracts and Retained Leases will be assumed and paid by the Purchaser, resulting in the treatment of counterparties to the Retained Contracts and Retained Leases the same as if such contracts were assigned pursuant to section 11.2 of the CCAA.;
- (g) numerous contracts of the Vendors, and liabilities thereunder, will continue including, without limitation, various employment contracts with existing employees, supplier contracts, and customer contracts; and
- (h) the Vendors will be free from any and all liabilities and will have a clean balance sheet other than in respect to the Retained Liabilities as a result of the vesting of all Excluded Liabilities in and to ResidualCo; and

39. In respect of the Directors' Charge, I understand that no amounts are due thereunder. I understand that all post-filing statutory amounts in respect to wages, source deductions and HST have been paid in the ordinary course in these CCAA proceedings.

## **B. The Reverse Vesting Structure is Necessary**

40. The Transactions contemplated in the Subscription Agreement have been structured to form a “reverse vesting” transaction. In essence, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to the purchaser on a “free and clear” basis and all excluded assets, excluded contracts and excluded liabilities remain with the debtor company, the Transactions provide for a share transaction whereby:

- (a) the Purchaser will subscribe for and purchase new shares of the Vendors, who will, in turn, cancel and terminate all of their existing equity interests so that the Purchaser will be the sole shareholder of the Vendors; and
- (b) all Excluded Assets and Excluded Liabilities with respect to the Vendors will be transferred and “vested out” to ResidualCo, so as to allow the Purchaser to indirectly acquire the Vendors’ Business and assets on a “free and clear” basis.

41. In consultation with the Vendors, the Purchaser concluded that a reverse vesting structure was necessary and appropriate to preserve and maximize value in the circumstances.

42. Specifically, the reverse vesting structure ensures the preservation and efficient operational transfer of the Vendors’ assets and Business, including critical contractual relationships, permits and certifications, and tax losses. The Transactions result in no different treatment of creditors than had the Transactions been structured as a “traditional” approval and vesting transaction rather than a “reverse” vesting transaction. I understand that the Monitor shares this view.

(i) **The Reverse Vesting Structure Preserves the Certifications**

43. The Purchaser and the Vendors believe that it is necessary to use a reverse vesting structure as it preserves the Vendors' licences, certifications and permits that are necessary to operate the Business (the "**Certifications**"). Among the Certifications that will be maintained through the reverse vesting structure are:

- (1) Prequalification Certifications ("**Prequalification Status**"): EBCL presently has Prequalification Status with approximately 15 municipalities in Ontario. Prequalification Status is a necessary condition to bidding on jobs in those municipalities. In the event that the Transaction proceeded by way of an asset sale, the new company would not have the benefit of prequalification status which would deprive it from bidding on public infrastructure construction jobs with pre-qualification required.
- (2) EBCL's Certificate of Recognition ("**COR**"): EBCL received this certification for implementing an externally audited health and safety management system. COR is a national accreditation standard that verifies full implementation of an employer's Occupational Health and Safety Management System. COR is often used as a condition of contract by the public and private sector across Canada and is one of the highest safety standards in Ontario; and
- (3) Commercial Vehicle Operator Registration ("**CVOR**"): EBCL and Trolan each have a CVOR issued by the Ontario Ministry of Transportation, Transportation Safety Division. CVOR is a mandatory program in Ontario that regulates and monitors the safety of commercial vehicles and drivers.

44. The Certifications are critical to the operations of the Business given the highly regulated nature of the construction industry. Without the COR, CVOR, or Prequalification Status, the Vendors would be unable to bid on the majority of the projects in Ontario, thereby impacting the going concern value of the Vendors.

45. Under a traditional asset sale transaction structure, the COR and CVOR Certifications are difficult if not impossible to transfer, with the result being that a purchaser would need to obtain new COR and CVOR Certifications. Such a requirement would either not be feasible or would result in extensive delays, costs, and uncertainty. For example,

- (a) it takes approximately three years and an investment of \$1 million to obtain a COR certification; and
- (b) it is impossible to get Prequalification Status without years of experience as a construction company.

46. Based on the foregoing, the reverse vesting structure permits the most cost-effective, efficient, and certain method of preserving the Certifications in the Vendors.

**(ii) The Reverse Vesting Structure Efficiently Preserves Contractual Relationships**

47. The reverse vesting structure permits the continuation of the Retained Contracts while minimizing the time, risk and professional costs that would be associated with having to

renegotiate or transfer on a logistical basis, all of the Retained Contracts to a new entity, whether through individual consents to assignment or assignment orders.

**(iii) The Reverse Vesting Structure Preserves Tax Losses**

48. The reverse vesting structure also preserves the Vendors' accrued tax losses net of any debt forgiveness amounts (the "**Tax Losses**") for the benefit of the Purchaser. The Tax Losses total approximately \$48 million. The Tax Losses have going-concern value for the Purchaser as they can be set off against future income tax. I am advised by tax consultants that the Tax Losses are non-transferable assets that cannot be preserved within a traditional asset purchase transaction. Further, I believe that the Tax Losses have no value in bankruptcy as there would be no income against which they could be applied.

49. Overall, I believe that the reverse vesting structure is necessary and appropriate to avoid disruptions, minimize costs, facilitate closing, and maximize and preserve the Business' current and future value for the Purchaser. I believe that the economic result produced by the reverse vesting order structure is at least as favourable as any other alternative structure, and likely more favourable when the cost efficiencies and other advantages highlighted above are considered.

**VI. RELIEF SOUGHT**

**A. Approval of the Transactions**

50. The Applicants seek the RVO to approve the Subscription Agreement and Transactions whereby, the Purchaser will acquire the Purchased Shares in the Vendors with the Vendors holding only the Retained Assets and the Retained Liabilities.

51. The Subscription Agreement is the product of a Court-approved SISP and in my view is commercially reasonable in the circumstances. The parties to the Subscription Agreement are sophisticated and were advised by professional legal advisors.

52. I believe that the market has been broadly and adequately canvassed through the pre-filing sales process and the implementation of the SISP. The SISP identified as many interested parties as possible in the circumstances. The Transactions are the only actionable transactions that have materialized after solicitation and marketing by the Sales Advisor. The Subscription Agreement represents the best opportunity for the Business to continue as a going-concern for the benefit of its many stakeholders including employees, suppliers and customers.

53. The Vendors believe that the Subscription Agreement and the proposed Transactions provide the best outcome for their creditors in the circumstances given that, among other things:

- (a) the Subscription Agreement is the product of a broad, transparent, and fair Court-approved SISP and the efforts of the Applicants, the Sales Advisor, and the Monitor to consummate a value maximizing transaction;
- (b) the Subscription Agreement is the best offer obtained in the SISP to maximize value for the Vendors' stakeholders;
- (c) the consideration to be received is reasonable and fair, taking into account the market value of the Property and the broad canvassing of the potentially interested parties during the pre-filing strategic process and the SISP;
- (d) the Subscription Agreement is supported by the Monitor and was developed in consultation with the Vendors' senior secured creditors;

- (e) the DIP Lender and senior secured creditor had substantial involvement with the negotiation of the transaction and were consulted;
- (f) BDC was consulted in respect to the assumption of their indebtedness by the Purchaser and Aviva was advised that their construction projects would be continuing as a result of the Transactions; and
- (g) closing of the Transactions require only customary closing conditions and requisite approvals.

54. Based on the results of the SISP, I believe that if the Transactions do not proceed, it is unlikely that there will be another purchaser willing to purchase the Business on a going-concern basis. The Transactions represent the best option to avoid the Vendors ceasing operations and liquidating their assets in a bankruptcy. This would be a suboptimal outcome as compared to the Transactions, for all the reasons discussed above.

#### **B. Addition of ResidualCo as an Applicant**

55. The RVO provides that ResidualCo, as at the Closing Time, shall be a company to which the CCAA applies, and shall be added as an applicant in these CCAA proceedings. ResidualCo is incorporated as a company under the laws of the Province of Ontario and has no issued share capital.

56. As mentioned above, all of the liabilities of the Vendors other than the Retained Liabilities shall vest in and to ResidualCo, following which, on the Closing Time:

- (a) the Applicants shall be discharged from these CCAA proceedings as they will have a clean balance sheet other than Retained Liabilities; and

- (b) ResidualCo will be added to these CCAA proceedings as it will have been vested with all of the Excluded Liabilities, which exceed \$5 million.

**C. Vesting of Excluded Assets and Excluded Liabilities in ResidualCo**

57. The RVO provides that all Excluded Assets and Excluded Liabilities shall vest absolutely in ResidualCo and cease being obligations of the Vendors. The RVO further provides that any related “Excluded Liability Claim” shall be released and discharged as against the Vendors and their Property at the Closing Time.

58. The vesting of the Excluded Assets and Excluded Liabilities in ResidualCo is required by the Purchaser as part of the Transactions. No creditors of the Vendors are prejudiced by the reverse vesting structure relative to the typical approval and vesting structure as their position and recovery in the circumstances would be the same.

59. The RVO further provides that BDO or the director of ResidualCo shall be authorized to file an assignment in bankruptcy for ResidualCo. BDO (or another licensed trustee at BDO’s direction) shall be authorized, but not directed, to act as trustee-in-bankruptcy to the estate of ResidualCo. This is appropriate as part of an orderly wind-up of the ResidualCo estate and these CCAA proceedings.

**D. Cancellation of Existing Equity Interests**

60. The Subscription Agreement provides that, pursuant to the RVO, all “Existing Shares” shall be deemed terminated and cancelled without consideration. Existing Shares exclude the Purchased Shares but include all other existing equity interests in the Vendors.

61. The cancellation of all Existing Shares is required by the Purchaser as part of its purchase of the Vendors. I do not believe that the cancellation of Existing Shares without consideration creates any added prejudice in the circumstances since there is no alternative transaction

available to the Vendors that would offer any recovery on account of equity interests. Recovery on account of equity interests would require the prior payment of all creditor claims in full, a result that is not currently possible given the results of the SISP.

62. Furthermore, in the event the Transactions are not approved, the Vendors will likely have no other option but to liquidate their assets in a bankruptcy. In that case equity interests will continue to remain worthless and subordinate to all other claims, and there will be no payment whatsoever on account of equity claims.

#### **E. Approval of the Releases for the Pre-Filing D&O Released Claims**

63. In addition, the RVO provides for pre-filing releases of the Released D&Os, being the current directors and officers of the Applicants, from any and all claims that any person may have or be entitled to assert against the Released D&Os based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to commencement of these CCAA proceedings in respect of the Applicants, the Business, operations, assets, property and affairs of the Applicants and/or these CCAA proceedings (collectively, the “**D&O Released Claims**”).

64. The releases of the Released D&Os are limited in scope and do not waive or bar any claim or liability arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O, any claims that section 5.1 of the CCAA precludes from being released, and the liabilities and obligations of the personal guarantors with respect to an Settlement Agreement with BMO and the personal guarantors.

65. The Released D&Os are current directors of the Applicants who have made and will continue to make significant and material contributions in connection with the CCAA proceedings and the negotiation of the Transactions, which will allow the Applicants to continue their

operations as a going concern. The Released D&Os have been integrally involved in the restructuring process.

66. The Released D&Os are also critical to the completion of the Transactions and the go-forward operations of the Business given they will retain their roles as directors and officers throughout the completion of and after the Transactions. I, as a director and officer, require finality that I will be released from pre-filing liabilities to continue in my role as director and officer. I have spoken to the other director and officer and understand that she similarly requires the releases to achieve finality as to her ongoing liabilities.

67. The only pre-filing liabilities of the directors and officers of the Applicants that I am aware of are the following: (a) EBCL owes approximately \$467,000 in HST remittances; (b) EBCL owes approximately \$877,000 in source deductions; (c) Yarfield owes approximately \$1,339,000 in HST remittances; and (d) Yarfield owes approximately \$1,350,000 in source deductions.

#### **F. Approval of the Releases for the Post-Filing Released Claims**

68. As part of the Transactions, the Applicants seek a limited release of the Released Claims in favour of the Released Parties, being the current directors, officers, shareholders, partners, employees, consultants, legal counsel and advisors to the Applicants, the Monitor, the Purchaser, and ResidualCo.

69. The Released Claims includes any liability based on any act or omission, transaction, offer, investment proposal, dealing, or other fact, matter, occurrence or thing existing or taking place prior to the Closing Time and arising in connection with or relating to:

- (a) these CCAA proceedings;
- (b) the Subscription Agreement; and

- (c) the consummation of the Transactions, and/or any closing document, agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing.

70. The RVO provides that the releases shall only become effective upon the Closing Time. Moreover, the RVO expressly provides that nothing in the order shall waive, discharge, release, cancel or bar any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of any Released Party under, or in connection with, the Subscription Agreement.

71. The Released Parties have been instrumental to these restructuring proceedings. Moreover, continued involvement with the Applicants of its directors, officers and employees is key to the proposed Transactions and the Business going forward. As such, the Released Parties have made a substantial contribution to the CCAA process and the Transactions.

72. The scope of the releases is closely tied to these CCAA proceedings and the Transactions. The releases are not overly broad and do not release liabilities that are extraneous to the restructuring process. The releases are critical to the restructuring of the Applicants and are necessary to ensure the Transactions close.

73. The releases will ensure the stability and finality of the Transactions and these CCAA proceedings and will provide certainty for the Released Parties which is appropriate and necessary following the Closing Time of the Transactions and eventual termination of these CCAA proceedings.

74. I am advised that the Monitor supports the releases in favour of the Released Parties as reasonable in the circumstances, and as part of its recommendation that the Court grant the RVO and approve the Transactions.

**G. Extension of the Stay Period**

75. Once the Transactions close, the Vendors will be solvent entities owned and organized under the Purchaser and will not require extended creditor protection or further relief under the CCAA.

76. As a result, the RVO provides that, upon the Closing Time, as confirmed by the filing of a Monitor's closing certificate, the Applicants shall cease being applicants in these CCAA proceedings and shall be released from the purview of the Court orders made in these CCAA proceedings.

77. To permit the preservation of the *status quo* until BDO can complete the outstanding tasks necessary to complete this CCAA proceeding, the Applicants propose that the Stay of Proceedings be extended until October 31, 2025.

78. The extension of the Stay of Proceedings is critical to providing the Vendors with breathing room to close the Transactions, which will maximize the realization of the Business and preserve its going-concern operations for the benefit of creditors and stakeholders. It will also allow the Monitor to take any administrative steps necessary to conclude these CCAA proceedings.

79. Since the granting of the Stay Extension Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize the Business, prepare and implement the SISF, and negotiate and consummate the Transactions.

80. The Applicants have worked with the Monitor to prepare an updated cash flow forecast, which reflects that the Applicants are expected to maintain liquidity and fund operations during the extension of the Stay of Proceedings. I understand from the Monitor that the cash flow forecast will be appended to its Fourth Report.

81. I am not aware of any creditors who would be prejudiced by the continuation of these proceedings during the extended Stay of Proceedings. I also understand that the Monitor is supportive of the requested extended Stay of Proceedings.

#### H. Enhanced Powers of the Monitor

82. To facilitate and streamline the process of winding down ResidualCo and completing these CCAA proceedings, the RVO seeks to grant the Monitor with certain enhanced powers including empowering the Monitor to:

- (a) cause ResidualCo to take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, ResidualCo, contemplated to be taken or executed by ResidualCo pursuant to or in connection with the Subscription Agreement or the Transactions contemplated thereby (or as otherwise may be considered necessary or desirable in connection therewith) or any Order of this Court;
- (b) exercise any powers which may be properly exercised by any board of directors of ResidualCo;
- (c) open one or more new accounts in the name of the Monitor for and on behalf of ResidualCo (the “**ResidualCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo may be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo, the ResidualCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;

- (d) cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo, the distribution of the proceeds of ResidualCo's property, or any other related activities, including in connection with bringing this CCAA proceeding to an end;
- (e) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo (including any governmental authority) in the name of or on behalf of ResidualCo;
- (f) claim or cause ResidualCo to claim any and all insurance refunds or tax refunds to which ResidualCo is entitled; and
- (g) assign ResidualCo, or cause ResidualCo to be assigned, into bankruptcy, and the Monitor shall hereby be entitled but not obligated to act as a trustee of ResidualCo in any such bankruptcy.

**I. Approval of the Reports and Fees of the Monitor and its Counsel**

83. As described in the Monitor's Reports, the Monitor has undertaken numerous activities to facilitate the CCAA proceedings and the Applicants' operational restructuring efforts. The Applicants are now seeking approval of the fees and activities of the Monitor and its counsel as described in the Fourth Report. To this end, I understand that the Monitor and its counsel will prepare and file the Fee Affidavits with the Court.

**J. Sealing of the Confidential Exhibit**

84. The Applicants seek to seal Confidential Exhibit "1" (the "**Confidential Exhibit**") and the Confidential Appendix of the Fourth Report ("**Confidential Appendix**") until the earlier of the

closing of the Transactions or further order of the Court. The Confidential Exhibit and Confidential Appendix contains commercially sensitive information that, if made public, may affect the Applicants' ability to maximize value in the circumstances that the Transactions fail to close. The sealing of the Confidential Exhibit is the least restrictive means possible to protect the information given that only the purchase price is redacted; the Subscription Agreement is otherwise appended to this affidavit and available for review by stakeholders.

**K. Preventing the Registration of Pre-Filing Lien Claims on Continuing Project Contracts**

85. The Applicants seek an order preventing any person from preserving or perfecting a Pre-Filing Lien Claim under the *Construction Act* on any Continuing Project Contracts in respect to services or work performed prior to the Filing Date.

86. I believe that such an order is necessary as the Purchaser will not be responsible for pre-filing claims as such claims will be vested out to ResidualCo. Accordingly, any Pre-Filing Lien Claims can be advanced as a claim against the Lien Charge, which will be transferred to ResidualCo.

87. If the lien claimants were entitled to preserve or perfect a Pre-Filing Lien Claim on the Continuing Project Contracts, that would cause prejudice to the Purchaser who is buying the Vendors free and clear of such Excluded Liabilities.

88. Given the lien claimants can still advance their Pre-Filing Lien Claims against ResidualCo, I verily believe there is no prejudice to the Lien Claimants from the requested relief.

## VII. CONCLUSION

89. For the reasons set out above, I believe that it is in the interests of the Applicants and their stakeholders that this Court grant the relief requested in accordance with the terms of the RVO.

90. I swear this affidavit in support of the Applicants' requested relief and for no other or improper purpose.

**SWORN REMOTELY** by **EUGENE** )  
**WOODBRIDGE** stated as being located in )  
the City of Oakville, in the Province of )  
Ontario, before me at the City of Toronto, )  
in the Province of Ontario, this 3rd day of )  
September, 2025, in accordance with O. )  
Reg 431/20, *Administering Oath or* )  
*Declaration Remotely.* )  
)

*Jessica Wuthmann*

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A Commissioner for taking Affidavits.  
Jessica Wuthmann

*gene woodbridge*

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**EUGENE WOODBRIDGE**

THIS IS **EXHIBIT "A"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W



Court File No. CV-25-00741419-00CL

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

THE HONOURABLE ) WEDNESDAY, THE 28<sup>TH</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF MAY, 2025

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED,  
YARBIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD.,  
AND YARFIELD SERVICES LIMITED (Collectively, the  
"Applicants")**

**THIRD AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference.

**ON READING** the Notice of Application, the affidavit of Eugene Woodbridge sworn April 16, 2025 (the "**First Woodbridge Affidavit**"), the affidavit of Eugene Woodbridge sworn April 23, 2025 (the "**Second Woodbridge Affidavit**"), the affidavit of Eugene Woodbridge sworn May 23, 2025, and the Exhibits thereto, the pre-filing report of BDO Canada Limited ("**BDO**") in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), dated April 16, 2025 (the "**Pre-Filing Report**"), the first report of the Monitor dated April 23, 2025 (the "**First Report**"), the second report of the Monitor dated May 27, 2025 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Bank of Montreal ("**BMO**"), and such other parties as listed on the Participant Information Form, with no one appearing for any other person although duly served as appears from the affidavit of service of Alina Stoica sworn May 23, 2025, filed,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are each a company to which the CCAA applies.

3. **THIS COURT ORDERS AND DECLARES** that effective April 17, 2025, the notice of intention to make a proposal of Earth Boring Co. Limited ("**EBCL**") under Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") bearing estate file number 32-3212103 is hereby taken up and continued under the CCAA and that, as of such date, the provisions of the BIA shall have no further application to EBCL, save that any and all steps, agreements and procedures validly taken, done or entered into by EBCL shall remain valid and binding, notwithstanding the commencement of these CCAA proceedings.

## PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the First Woodbridge Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges; and
- (c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the date of this Order if in the opinion of the Applicants, in consultation with the CRO (as defined below) and with the consent of the Monitor, such payment is necessary or desirable to avoid disruption to the operations of the Business or the Property of the Applicants during the CCAA proceedings.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the

Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) income taxes, and (iv) all other amounts related to such deductions or employee wages payable for periods following the date of this Order pursuant to the *Income Tax Act*, the *Canada Pension Plan*, the *Employment Insurance Act* or similar provincial statutes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicants and/or the CRO, with the consent of the Monitor and in consultation with the DIP Lender (as hereinafter defined), shall subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$2,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

15. **THIS COURT ORDERS** that until and including August 15, 2025, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including without limiting the generality of the foregoing any adjudication process pursuant to part II.1 of the *Construction Act*, shall be commenced or continued against or in respect of the Applicants, the Monitor, the CRO, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or

affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO PROCEEDINGS AGAINST PENNBRIDGE HOLDINGS INC.**

16. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Pennbridge Holdings Inc. (the "**Pennbridge Holdings**") or its respective employees and representatives acting in such capacities, or affecting its business or its property, except with the written consent of Pennbridge Holdings and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of Pennbridge Holdings or affecting its business or its property are hereby stayed and suspended pending further Order of this Court.

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

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the Monitor, the CRO, Pennbridge Holdings, or affecting the Business or the Property, including without limiting the generality of the foregoing (i) any rights arising out of or in connection with the prompt payment deadlines or a notice of non-payment under Part I.1 of the *Construction Act* and (ii) any rights in connection with a determination under Part II.1 of the *Construction Act*, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants and Pennbridge Holdings to carry on any business which they are not lawfully entitled to carry on and (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, and (iii) subject to the terms of the Lien Regulation Order dated as of the date of this Order (the "**LRO**"), prevent the filing of any registration to preserve or perfect a security interest.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the

Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **PRE-FILING VS POST-FILING SET-OFF**

19. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any person may want to make in seeking leave of the Court or following the granting of such leave.

#### **CONTINUATION OF SERVICES**

20. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of materials, goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

21. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any

Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Director's Charge**") on the Property, which charge shall not exceed an aggregate total amount of \$400,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 52 and 54 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

## STAY OF PERFORMANCE BONDS

26. **THIS COURT ORDERS AND DECLARES** that during the Stay Period, no Person, holding a Performance Bond (as defined in the First Woodbridge Affidavit), including any Person named as an owner or obligee under such bond, shall be permitted to enforce and/or call on the Performance Bond ("**Performance Bond Claim**"), except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Performance Bond Claims currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## APPOINTMENT OF MONITOR

27. **THIS COURT ORDERS** that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, the CRO and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property and, among other things, ensure all disbursements are consistent with the Cash Flow Statements (as defined in Pre-Filing Report), as amended from time to time, and subject to the variances permitted in the DIP Commitment Letter;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel, on a timely basis of financial and other information as agreed to between the Applicants and the DIP Lender which

may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform their duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental*

*Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in Possession.

31. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

#### **APPOINTMENT OF CRO**

33. **THIS COURT ORDERS** that Steinberg Advisory Corp. is hereby appointed as the Chief Restructuring Officer ("**CRO**") over and in respect of the Applicants and shall have the powers and obligations set out in the engagement agreement between the Applicants and the CRO dated April 16, 2025 (the "**CRO Engagement**"), a copy of which is attached as Appendix "D" to the Pre-Filing Report.

34. **THIS COURT ORDERS** that the CRO Engagement is hereby approved, subject to such minor amendments as the parties thereto may agree to with the Monitor's consent.

35. **THIS COURT ORDERS** that subject to the terms of this Order, the CRO is hereby authorized to assist the Applicants and the Monitor, and to do all things, carry out all actions and perform all duties described in the CRO Engagement.

36. **THIS COURT ORDERS** that the CRO shall not be, or be deemed to be a director, officer or employee of the Applicants.

37. **THIS COURT ORDERS** the CRO shall not, as a result of the performance of the obligations and services in accordance with the terms of the CRO Engagement, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

38. **THIS COURT ORDERS** that the CRO have no liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent that such losses, claims, damages or liabilities result from gross negligence or wilful misconduct on the part of the CRO.

39. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the CRO, except with the written consent of the CRO or with leave of this Court.

40. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO or leave of this Court, provided that nothing in this Order shall empower the CRO to carry on any business which the CRO is not lawfully entitled to carry on.

41. **THIS COURT ORDERS** that the obligations of the Applicants to the CRO pursuant to the CRO Engagement shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**") in respect of the Applicants.

42. **THIS COURT ORDERS** that the Monitor may terminate the CRO and the CRO Engagement with thirty days' notice to the CRO and the Applicants.

#### **ADMINISTRATION CHARGE**

43. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants the CRO, and PricewaterhouseCoopers Corporate Finance Inc. (the "**Sales Advisor**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the

accounts of the Monitor, counsel for the Monitor, counsel for the Applicants, the CRO, and the Sales Advisor on a weekly basis or as otherwise agreed among the parties.

44. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

45. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel, three months of the Sales Advisor's Work Fee (as defined in the Sales Advisor Engagement as defined in the SISP Approval Order), and the CRO's Monthly Fees (as defined in the CRO Engagement) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate total amount of \$700,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 52 and 54 hereof.

#### **DIP FINANCING**

46. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from BMO (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$5.5 million unless permitted by further Order of this Court.

47. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of April 16, 2025 (the "**Commitment Letter**"), as amended from time to time.

48. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as

and when the same become due and are to be performed, notwithstanding any other provision of this Order.

49. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 52 and 54 hereof.

50. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon seven (7) days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

51. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

## VALIDITY AND PRIORITY OF CHARGES

52. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge, the Lien Charge (as defined in the Lien Regularization Order), and the Sales Advisor Charge (as defined in the SISP Approval Order) (collectively, the "**Charges**"), as among them,

- (a) in respect of the properties municipally known as 960 Zelco Drive, Burlington, Ontario, and legally described in PIN 07035-0005 (the "**Burlington Property**") and 75 Steelwell Road, Brampton, Ontario, and legally described in PIN 14028-0023 (the "**Brampton Property**" and together with the Burlington Property, the "**Real Property**") shall be as follows:

First – Administration Charge (to the maximum amount of \$700,000);

Second – Director's Charge (to a maximum amount of \$100,000 in respect of each of the Burlington Property and the Brampton Property);

Third – the interests of Business Development Bank of Canada in mortgages granted to the Business Development Bank of Canada up to maximum amount of (i) principal of \$10,225,000 plus interest, fees, costs and like amounts provided for under the terms of the said security on the Burlington Property and, (ii) principal of \$5,000,000 plus interest, fees, costs and like amounts provided for under the terms of the said security on the Brampton Property;

Fourth - DIP Lender's Charge;

Fifth – Sales Advisor Charge; and

Sixth - Lien Charge.

- (b) in respect of all Property other than the Real Property, shall be as follows:

First – Administration Charge (to the maximum amount of \$700,000);

Second – DIP Lender's Charge;

Third – Director's Charge (to the maximum amount of \$400,000);

Fourth – Sales Advisor Charge; and

Fourth – Lien Charge.

53. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

54. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, holdbacks, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, which for greater certainty shall include priority to the interests of any Person in respect of the Applicants' Property pursuant to the *Construction Act*, R.S.O. 1990, c. C.30, provided that the Applicants' Property shall not include any accounts receivable subject to a trust under the *Construction Act* in relation to the Discontinued EBCL Contracts, as defined in the First Woodbridge Affidavit.

55. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges (collectively, the "**Chargees**"), or further Order of this Court.

56. **THIS COURT ORDERS** that the Charges, the Commitment Letter, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes, other than as set out in paragraph 54 above; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

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

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

#### **SERVICE AND NOTICE**

58. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The National Post* a notice containing the information prescribed under the CCAA, (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner or by electronic message to the e-mail addresses as last shown in the Applicants' records, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the **Protocol** ") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at [https://www.ontariocourts.ca/scj/practice\\_directions/consolidated-practice-direction-toronto-region/#F\\_Commercial\\_List\\_Matters/](https://www.ontariocourts.ca/scj/practice_directions/consolidated-practice-direction-toronto-region/#F_Commercial_List_Matters/)) shall be valid and effective service.

Subject to Rule 17.05 this Order shall constitute an

order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/earth-boring-co-limited> (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

62. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

63. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

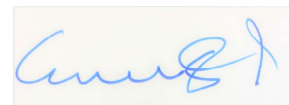
64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business, or the Property.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor, and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

67. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 52 and 54 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

68. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order without any need for entry and filing.



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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH  
BORING CO. LIMITED ET AL.

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

Proceedings commenced at *Toronto*

**AMENDED AND RESTATED INITIAL ORDER**

**RECONSTRUCT LLP**

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Toronto, ON M5H 2A4

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**Jessica Wuthmann** LSO No. 72442W

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Tel: 416.613.8288

**Lawyers for the Applicants**

THIS IS **EXHIBIT "B"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



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A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W



Court File No.

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

THE HONOURABLE ) THURSDAY, THE 17<sup>TH</sup>  
 )  
MADAM JUSTICE STEELE ) DAY OF APRIL, 2025  
 )

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED, YARBIDGE HOLDINGS INC., TROLAN  
INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED (Collectively, the  
"**Applicants**")

APPLICANTS

**LIEN REGULARIZATION ORDER**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference.

**ON READING** the Notice of Application, affidavit of Eugene Woodbridge sworn April 16, 2025 and the Exhibits thereto ("**Woodbridge Affidavit**"), the Pre-Filing Report of BDO Canada Limited, as the proposed monitor (if so appointed, the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Bank of Montreal, and such other parties as listed on the Participant Information Form, with no one appearing for any other person although duly served as appears from the affidavit of service of Samantha Currie sworn April 17, 2025, filed,

### ***Service***

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### ***Defined Terms***

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:

(a) **"Bond"** means a labour & material and/or a performance Bond provided by a Bonding Company in support of an EBCL Project;

(b) **"Bonded Off Lien"** means a lien:

(i) that attaches to the land and has been the subject of a registered claim for lien and a certificate of action in respect of that lien has been issued, or

(ii) that does not attach to the land, where a notice of lien has been given;

which lien has been vacated from title and/or as a charge upon the Holdback upon the posting of security, which security is subject to claims of all Persons having a lien pursuant to the Construction Act;

(c) **"Bonding Company"** means Aviva Insurance Company of Canada;

(d) **"EBCL Project"** means those construction projects set out in **Schedule "A"** for which the Applicants or any of them are a contracting party and which are the Continuing EBCL Projects as defined in the Woodbridge Affidavit;

(e) **"Filing Date"** means April 17, 2025;

(f) **"Holdback"** means Statutory Holdback or Notice Holdback;

- (g) **“Lien Bond”** means a bond or other security posted in respect of a Bonded Off Lien;
- (h) **“Lien Claims”** mean the claims of any person who supplied services and/or materials to preserve or perfect their liens, including by way of notice of lien, pursuant to the *Construction Act*;
- (i) **“Notice Holdback”** means any further amounts beyond the Statutory Holdback required to be, or in fact, withheld from one of the Applicants as a payee by a payor as a result of notice by any Person claiming a lien pursuant to the *Construction Act*;
- (j) **“Owner”** means a person or entity who is the legal owner of the premises comprising the site of an EBCL Project; and
- (k) **“Statutory Holdback”** means the 10%, or the other applicable percentage required by the *Construction Act*, of the value of services or materials supplied under a contract or subcontract required to be withheld by a payor from one of the Applicants as a payee.

3. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms shall have the meaning given to them in the Initial Order granted by this Court on April 17, 2025 (as amended, the **“Initial Order”**).

***Stay of Lien Claims pursuant to the Construction Act***

4. **THIS COURT ORDERS** that no Person shall be permitted to preserve or perfect a Lien Claim under the *Construction Act* with respect to any EBCL Project and that any Lien Claim in respect of an EBCL Project be and hereby is stayed and any person seeking to enforce such a claim shall be required to seek the rights and remedies set out in this Order. However, for greater

certainty, the Applicants shall be entitled to preserve and perfect their Lien Claims, including the commencement and continuation of legal proceedings, under the Construction Act or otherwise in favour of the Applicants.

***EBCL Projects***

5. **THIS COURT ORDERS** that any Lien Claim that has been preserved or perfected by any Person, or for which notice of lien has been given by any Person, in respect of an EBCL Project (a "**Preserved Lien Claimant**"), which is not a Bonded Off Lien as of the date of this Order, be and is hereby vacated on terms that any Person having such a Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of preservation or delivery of notice of such Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 12 herein, *provided that* the vacating of preserved liens pursuant to this paragraph shall not be deemed to cure any default triggered by the filing of a lien under any contract with any Owner.

6. **THIS COURT ORDERS** that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically vacate a Lien Claim referred to in paragraph 5 herein.

7. **THIS COURT ORDERS** that any Person having a Bonded Off Lien as of the date of this Order shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of registration of such Lien Claim and shall also be entitled to the Lien Charge referred to in paragraph 12 herein.

8. **THIS COURT ORDERS** that any requirements for any Lien Claims to be perfected or set down for trial pursuant to the *Construction Act* are hereby deemed to have been complied with.

9. **THIS COURT ORDERS** that any trial dates that are currently set between the date of

this Order and the Stay Period (as defined in the Initial Order dated April 17, 2025 and as may be amended by further order) or such later date as may be subsequently ordered by this Court, with respect to any Lien Claim action by any Person in respect of an EBCL Project be and are hereby vacated.

10. **THIS COURT ORDERS** that any requests for information to the Applicants or other interested parties pursuant to the *Construction Act*, including any requests pursuant to section 39 of that Act whether outstanding or delivered after the date of this Order (the “**Information Requests**”), are hereby stayed pursuant to the terms of this Order. However, the Monitor, in consultation with the Applicants, or as directed by this Court, may provide any information in respect of an Information Request as the Monitor deems appropriate or as the Court directs.

#### ***Treatment of Lien Claims***

11. **THIS COURT ORDERS** that unless deemed to have delivered a Lien Notice in accordance with this Order, any Person who wishes to assert a Lien Claim after the Filing Date in respect of an EBCL Project (the “**Asserting Lien Claimant**”), whether in respect of materials and/or services supplied before or after the Filing Date shall deliver by email a notice in the form attached as **Schedule “B”** hereto (the “**Lien Notice**”), to the following persons (collectively, the “**Lien Notice Parties**”): the Monitor c/o Clark Lonergan ([clonergan@bdo.ca](mailto:clonergan@bdo.ca)), with a copy to the Monitor’s counsel c/o Clifton Prophet and Heather Fisher ([clifton.prophet@gowlingwlq.com](mailto:clifton.prophet@gowlingwlq.com); [heather.fisher@gowlingwlq.com](mailto:heather.fisher@gowlingwlq.com)), and with a copy to the Applicants c/o Caitlin Fell ([cfell@reconllp.com](mailto:cfell@reconllp.com)), within the time frames prescribed by the *Construction Act* in order to preserve and perfect their Lien Claim for that EBCL Project. With respect to any EBCL Project for which a Bond has been issued, in addition to delivering the Lien Notice to the Lien Notice Parties, an Asserting Lien Claimant shall deliver by email a copy of the Lien Notice to counsel to the Bonding Company c/o Rich Yehia ([ryehia@blg.com](mailto:ryehia@blg.com)). For the purposes of this Order, any Preserved Lien Claimant shall be deemed to be an Asserting Lien Claimant that has delivered a

Lien Notice in accordance with this paragraph.

12. **THIS COURT ORDERS** that the Asserting Lien Claimant, upon delivering or being deemed to have delivered a Lien Notice in accordance with this Order, be and is hereby granted a charge (the “**Lien Charge**”) against the Applicants’ property in the applicable EBCL Project in respect of which the Lien Claim arises equivalent to, and only to the extent of, any security granted under the *Construction Act* for such Lien Claim. Without limiting the generality of and subject to the foregoing, a Lien Charge shall attach to the following: (i) any property of the applicable Applicant that, pursuant to the *Construction Act*, would be subject to a charge securing the underlying Lien Claim secured by such Lien Charge; (ii) property of any Owners of the real property pertaining to the EBCL Project in question that, pursuant to the *Construction Act*, would be subject to a charge securing the underlying Lien Claim secured by such Lien Charge (if any); (iii) any Holdback in the hands of a payor of the Applicant against which the Asserting Lien Claimant’s Lien Claim described in the Lien Notice would otherwise have a charge pursuant to the *Construction Act*; and (iv) any rights (if any) under an applicable Lien Bond, without prejudice to the right of the Bonding Company who has posted such Lien Bond to seek by court order the release of such Lien Bond and any other related relief, provided that the Bonding Company shall be subrogated to any rights related to such Lien Claim as set out above. For greater certainty, a Lien Charge shall not attach to any property of any Applicant or other Person, or attach to any rights in a Lien Bond, unless such property or Lien Bond would otherwise have been charged with or subject to the lien underlying such Lien Charge pursuant to the *Construction Act*.

13. **THIS COURT ORDERS** that each Applicant, with the assistance and oversight of the Monitor, shall deposit all funds received by such Applicant on account of an EBCL Project into one or more bank accounts, and shall keep written records respecting the funds, detailing the amounts that are received into and paid out of the funds, and any transfers made for the purposes of any EBCL Project and shall maintain such records on a project-by-project basis, such that all

funds received on account of an EBCL Project are traceable to such EBCL Project and the depositing of funds into one bank account in accordance with this paragraph shall not constitute a breach of trust.

14. **THIS COURT ORDERS** that any funds received by an Applicant on account of an EBCL Project may only be paid in satisfaction of, first, any amounts payable in respect of obligations secured under the Charges (as defined in the Initial Order), second any trust obligations in relation to such EBCL Project, and, after satisfaction of all trust obligations, fees, costs and expenses arising in connection with such EBCL Project or other project-specific financing advanced in respect of such EBCL Project, subject to further Order of this Court, and for greater certainty nothing herein shall affect the priorities set out in paragraph 53 of the Initial Order.

15. **THIS COURT ORDERS** that Lien Charges created by this Order shall not be rendered invalid or unenforceable, and the rights and remedies of the Asserting Lien Claimants entitled to the benefit of a Lien Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings; (b) any application(s) for order(s) issued pursuant to the CCAA or any order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the CCAA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Lien Charge, shall neither create nor be deemed to constitute a breach by any Applicant of any Agreement to which it is a party;
- (ii) the payments made by any Applicant, or any other Person or entity, pursuant to this Order, and the granting of the Lien Charge, does not and will not constitute

preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law; and

- (iii) the Lien Charge shall be enforceable in any bankruptcy proceedings of any Applicant with the same priority as set out in paragraph 21 herein as against the property secured by the Lien Charge, including any Holdback.

### ***Treatment of Holdback Funds***

16. **THIS COURT ORDERS** that any Person who is in possession of Holdback funds be and hereby is restrained from paying, setting-off, or encroaching upon such Holdback funds until the day after the last day upon which a claim for lien could have been registered/delivered for the relevant contract pursuant to the *Construction Act* but for the provisions of this Order, at which time or such other time as may be agreed to by the Monitor, such Person shall, subject only to any right of set-off claimed against Notice Holdback funds, pay the Holdback funds to the Monitor in trust, irrespective of whether any Lien Claims or Lien Notices have been made, delivered, preserved or perfected or written notice of any Lien Claim or Lien Notice has been received, provided that any exercise of set-off shall be subject to: (i) the consent of the Monitor and Applicants, who shall consult with the Person(s) who delivered Lien Notices for the applicable EBCL Project, (ii) or further order of the Court, on notice to the Monitor, Applicants, the applicable Bonding Company (only with respect to a EBCL Project for which there is a Bond), and the Person(s) who delivered Lien Notices on the applicable EBCL Project, and in the case of (i) or (ii), any of the foregoing parties shall be entitled to challenge such set-off, on motion to the Court (whether or not the Monitor consents to such set-off). Upon payment of the Holdback funds to the Monitor pursuant to this paragraph 16, the Person who was in possession of such Holdback funds shall be deemed to have been in the same position as if (i) no written notices of lien had been received, no Lien Claims had been made, asserted, delivered, preserved, or perfected, and (ii)

no Lien Notice had been received, and such Person shall have no further liability for such Holdback funds to any Person. For greater certainty, provided that Holdback funds have been paid to the Monitor. any Person who is in possession of Holdback funds, and who receives a written notice of lien, Lien Notice or other notice of a Lien Claim, shall not be required to retain Notice Holdback with regard to that written notice of lien, Lien Notice or other notice of a Lien Claim.

17. **THIS COURT ORDERS** that any general contractor, Owner, and/or payor of any level above the level of the Applicants in connection with an EBCL Project shall have no liability whatsoever, whether pursuant to the *Construction Act*, any other law, equity, or otherwise, save and except for any gross negligence or wilful misconduct on its part, to any Person (including any subcontractor of any level to the Applicants, any other supplier of any level to the Applicants, or creditor of the Applicants) in connection with amounts paid to the Monitor on or after the Filing Date pursuant to the terms of this Order in respect of an EBCL Project.

18. **THIS COURT ORDERS** that, for greater certainty, and subject to paragraph 4 of this Order or the terms of the Initial Order, nothing in this Order shall affect the rights of any Person under the *Construction Act* with respect to any rights pursuant to any Bond posted in favour of any such Person named in the applicable Bond, except any such claims against any of the Applicants shall require consent of the Monitor or leave of this Court to be commenced or continued.

19. **THIS COURT ORDERS** that with respect to a Bonded Off Lien, nothing in this Order affects any rights under or recourse of any Person under the *Construction Act* to any Lien Bond, or any other security posted with respect to such Bonded Off Lien (without prejudice to the right of any Bonding Company to seek the release of the Lien Bond or any other security posted with respect to any Bonded Off Lien and any other related relief), provided however that nothing in this Order restricts, limits or derogates from the stay of proceeding in favour of the Applicants set out

in paragraph 14 of the Initial Order.

20. **THIS COURT ORDERS** that the Monitor shall serve a copy of this Order on any Person known to the Monitor who is or may be in possession of a Holdback fund.

21. **THIS COURT ORDERS** that the Monitor may, at a time deemed by the Monitor to be appropriate after consulting with the Applicants, and shall, upon further order of this Court made on a motion brought on at least 7 days' notice to the Monitor and the Applicants, bring a motion on notice to the service list seeking the approval of a process for reviewing, determining or challenging the (i) validity or timeliness of a Lien Notice; (ii) validity or quantum of the amounts set out in the Lien Notice; (iii) validity or quantum of an Asserting Lien Claimants' entitlement to a Lien Charge under this Order; and (iv) the attachment or priority of a Lien Charge under this Order.

22. **THIS COURT ORDERS** that the Monitor may, if necessary and at a time deemed by the Monitor to be appropriate after consulting with the Applicants and the Bonding Companies, and shall, upon further order of this Court made on a motion brought on at least 7 days' notice to the Monitor, the Applicants and the Bonding Companies, bring a motion on notice to the Service List seeking the approval of a dispute resolution process among the Applicant and any general contractor, owner, and/or payor of any level above the level of the Applicants in connection with an EBCL Project.

***General***

23. **THIS COURT ORDERS** that in discharging its obligations under this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in these CCAA Proceedings; (ii) shall incur no liability or obligation as a result of carrying out matters or any act or omission in connection with this Order; (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all

without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be required to carry out matters in connection with this Order from the Applicants or any of their subsidiaries.

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

Jana  
Steele

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Digitally signed  
by Jana Steele  
Date: 2025.04.17  
16:15:18 -04'00'

**SCHEDULE “A” – Projects to which the Order applies**

| <b>Job#</b> | <b>Project Owner</b>               | <b>Customer</b>            | <b>Job Name</b>                                  |
|-------------|------------------------------------|----------------------------|--|
| 21015       | Halton Region                      | C&M McNally                | South Georgetown Wastewater Servicing            |
| 23010       | Town of Lincoln                    | Town of Lincoln            | Lincoln Watermain                                |
| 24019       | County of Simcoe                   | Primrose                   | SimcoeCounty Rd 21                               |
| 23007       | Rose Corporation                   | Clarose Midhurst GP Inc.   | Midhurst Heights                                 |
| 23002       | Alectra                            | Aecon Utilities Inc        | Elexicon - South Blair                           |
| 23011       | TTC                                | Bronte Construction        | Sheppard Station                                 |
| 24017       | Ottawa Public Works                | Tomlinson Group            | Confederation Heights                            |
| 24010       | 537 Kingstson Rd East Holdings Inc | Sora Group Inc.            | 537 Kingston Road East                           |
| 24016       | County of Brant                    | L82 Construction Ltd.      | Dundas Street East                               |
| 24009       | Corporation of Welland             | Peters Construction Group  | Dain City Watermain                              |
| 24005       | Metrolinx                          | Alliance Verdi             | Metrolinx  |
| 24002       | Metrolinx                          | Clearway                   | PAPE   |
| 24012       | Niagara Region                     | Centennial Construction    | Chippawa Parkway Foundation                      |
| 24004       | Waterloo Region                    | Steed & Evans              | Foundry St Snyders Rd Reconstruction             |
| 25002       | Lakefront Utility Service Inc.     | Behan Construction Limited | Darcy Street Elevated Tank                       |
| 25004       | ENWIN                              | Amico Infrastructure Inc.  | Enwin Feedermain Phase 2 Project                 |
| 23012       | Region of Peel                     | Region of Peel             | Trenchless Crossing – Heart Lake, Elgin, Torbram |
| 24001       | City of Hamilton                   | City of Hamilton           | Garner Road Trunk SS                             |

**SCHEDULE "B"**

**FORM OF LIEN NOTICE TO MONITOR**

Name of Lien Claimant: .....

Address for Service: .....

Name of Owner: .....

Name of person to whom lien claimant supplied services or materials: .....

.....

Address:.....

Time within which services or materials were supplied:

from: ..... to .....  
(date supply commenced) (date of most recent supply)

Short description of services or materials that have been supplied:

.....  
Contract price or subcontract price: \$.....

Amount claimed as owing in respect of services or materials that been supplied:  
\$.....

(Use **A** where the lien attached to the premises; use **B** where the lien does not attached to the premises).

**A.** The lien claimant (if claimant is personal representative or assignee this must be stated) claims a lien against the interest of every person identified above as an owner of the premises described in Schedule A to this claim for lien.

**B.** The lien claimant (if claimant is personal representative or assignee this must be stated) claims a charge against the holdbacks required to be retained under either the *Construction Act*, RSO 1990, c. C.30 and any additional amount owed by a payor to the contactor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or materials that have been supplied by the lien claimant in relation to the premises at:

.....

(address or other identification of the location of the premises

Date:.....

Per:.....

(signature of claimant or agent)

I have authority to bind the corporation

**SCHEDULE A TO NOTICE TO MONITOR**

To the claim for lien of

.....

Description of premises:

(Where the lien attaches to the premises, provide a description of the premises for registration under the *Land Titles Act* or the *Registry Act*, as the case may be).

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED ET AL.**

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

Proceedings commenced at Toronto

**LIEN REGULARIZATION ORDER**

**RECONSTRUCT LLP**  
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Toronto, ON M5H 2A4

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Tel: 416.613.8288

**Lawyers for the Applicants**

THIS IS **EXHIBIT "C"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W

Court File No. [Type here]

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE  
HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD  
SERVICES LIMITED**

Applicants

**AFFIDAVIT OF EUGENE WOODBRIDGE**

(Sworn April 16, 2025)

I, **EUGENE WOODBRIDGE**, of the City of Oakville, in the province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Chief Executive Officer of Earth Boring Co. Limited ("**EBCL**"). I have been in this role since 2005, and previously served as Vice President of EBCL beginning in 1998. I am also the President of Yarbridge Holdings Inc. ("**Yarbridge**"), and the Vice President of Yarfield Services Limited ("**Yarfield**") and Trolan Investments Ltd. ("**Trolan**", together with EBCL, Yarbridge, and Yarfield, the "**Applicants**"). I am also a director of each of the Applicants. Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. All references to currency in this affidavit are references to Canadian dollars unless otherwise indicated.

3. This affidavit is sworn in support of an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c c-36, as amended (the “**CCAA**”) that, among other things:

- (a) continues the proceedings commenced EBCL by the filing of a notice of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) under the purview of the CCAA;
- (b) declares that the Applicants are each a “debtor company” to which the CCAA applies;
- (c) appoints BDO Canada Limited (“**BDO**” or the “**Proposed Monitor**”) as monitor of the Applicants (if appointed in such capacity, the “**Monitor**”);
- (d) approves the engagement of Steinberg Advisory Corp (“**Steinberg**”), as chief restructuring officer of the Applicants (the “**CRO**”);
- (e) grants a stay, for an initial period of not more than 10 days (the “**Initial Stay Period**”), of all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the current directors or officers of the Applicants (the “**D&Os**”), or affecting the Applicants’ business or any of the Applicants’ current and future assets, licences, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Property**”), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”);
- (f) grants a third party stay, on the same terms as the Stay of Proceedings, in favour of a related entity of the Applicants, Pennbridge Holdings (defined below);

- (g) authorizes the Applicants to pay, with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the date of this Order if, in the opinion of the Applicants, in consultation with the CRO and with the consent of the Monitor, such payment is necessary or desirable to avoid disruption to the operations of the business or the Property of the Applicants during the CCAA proceedings;
- (h) approves an interim financing loan agreement (the “**DIP Term Sheet**”) between the Applicants and the Bank of Montreal (“**BMO**” or the “**DIP Lender**”) pursuant to which the DIP Lender has agreed to advance to the Applicants the principal amount of \$5.5 million (the “**DIP Facility**”), with the initial advance to be limited to \$2.2 million during the Initial Stay Period (the “**Initial Advance**”);
- (i) grants the following charges, with the priority amongst them as set out below, which charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person:
  - (i) First – an “**Administration Charge**” against the Property, in the amount of \$300,000, as security for the payment of professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, the monthly fees of the Chief Restructuring Officer (as defined herein) and counsel to the Applicants, in connection with this CCAA proceeding (to be subsequently increased to \$600,000 at the Comeback Hearing (as that term is defined below));
  - (ii) Second – a “**DIP Lender’s Charge**” against the Property as security for the Applicants’ obligations under the DIP Term Sheet, in the maximum principal amount of \$2.2 million plus fees and interest (to be subsequently

increased to \$5.5 million at the Comeback Hearing), which will be subject only to the mortgage security granted to the Business Development Bank of Canada (“**BDC**”) by Trolan and Yarbridge with respect to the Burlington Property (defined below) and the Brampton Property (defined below); and

- (iii) Third – a “**Director’s Charge**” against the Property as security for the obligation of the Applicants to indemnify its D&Os from the obligations and liabilities that they may incur as D&Os after the commencement of the within proceeding, except for gross negligence or wilful misconduct, in the maximum principal amount of \$200,000 (to be subsequently increased to \$400,000 at the Comeback Hearing);
- (j) stays any person with recourse to a Performance Bond (as defined below), including any person named as an owner or obligee under such bond, from enforcing or calling on the Performance Bond except with the written consent of the Applicants and the Monitor; and
- (k) orders a comeback hearing for April 24, 2025 at 9:30 A.M. (the “**Comeback Hearing**”).

4. The Applicants also seek an order (the “**Lien Regularization Order**”) that, among other things:

- (a) stays the rights of any person who supplied services and/or materials to the Applicants solely with respect to certain construction projects to which the Applicants are a contracting party and which are listed in Schedule “A” to the Lien Regularization Order (the “**Continuing EBCL Projects**”), to preserve, maintain, perfect, or register liens (each a “**Lien Claim**” and such person asserting a Lien

Claim, a “**Lien Claimant**”), including by way of a notice of lien pursuant to and in accordance with the *Construction Act* R.S.O. 1990, c. C.30 (the “**Construction Act**”), other than as permitted by the Lien Regularization Order;

- (b) grants a charge over the Applicants’ Property in the applicable Continuing EBCL Project in favour of a Lien Claimant equivalent to, and only to the extent of, any security that, but for this proceeding, would otherwise be available under the *Construction Act*, as set out in and pursuant to the procedural requirements of the proposed Lien Regularization Order (the “**Lien Charge**”, collectively with the Administration Charge, the DIP Lender’s Charge and the Directors’ Charge, the “**Charges**”); and
- (c) declares that the priority of the Lien Charge: (i) shall rank subordinate to the Directors’ Charge; (ii) relative to the other Lien Charges, shall be equivalent to the priority granted under the *Construction Act*; and (iii) with respect to other creditors of the Applicants, shall, subject to any orders granted in these proceeding, have priority in accordance with the Federal laws of Canada and the Province of Ontario.

5. At the Comeback Hearing, the Applicants intend to seek an extension of the Stay of Proceedings and an expansion of the Charges, as applicable, to reflect the Applicants’ cash flow projections over any extended stay period.

## I. OVERVIEW

6. The Applicants are the oldest and largest trenchless construction service provider in Ontario. Their services include, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling.

7. Since their inception in 1947, the Applicants have grown tremendously to become the established industry leader in underground construction for complex infrastructure projects in Ontario. In particular, they have expanded their operations from approximately \$1 million in revenue in the 1990s to over \$80 million in adjusted revenue in 2023.

8. EBCL primarily works for municipalities, but also works with a diverse range of other customers in the construction industry. Given their specialized expertise, the Applicants have completed over 2,400 projects for over 120 customers. These projects provided critical water and waste management infrastructure to Ontario. Currently, EBCL is working on over a dozen medium-to-large scale underground infrastructure projects and have an additional 17 projects that they have been awarded but for which they have not yet broken ground.

9. The Applicants have a wide breadth of stakeholders, including their approximately 100 highly skilled employees, including unionized employees, specialized and often local suppliers as well as customers who retain the Applicants to provide services necessary for developing critical infrastructure for water and wastewater management in Ontario.

10. While the Applicants have successfully operated a complex and specialized infrastructure boring business in Ontario for over 78 years and have significant non-liquid assets, they have experienced significant financial and operational challenges over the past year that have caused acute liquidity crisis and imperiled the Business.

11. The financial challenges are associated with, among other things: (i) a rapid expansion of the Business that significantly increased the upfront capital required to operate the Business; (ii) changes to the eligibility requirements of Ontario's Housing-Enabling Water Systems Fund which delayed a majority of the Applicants' 2024 projects; (iii) unprecedented issues with one of the Applicants' infrastructure projects located in Caledon, Ontario; (iv) the shouldering of the upfront

costs of certain insurance claims; and (v) the significant impact of tariffs on the construction industry generally.

12. In light of these challenges which precipitated the Applicants' cash flow crisis, the Applicants determined that it is necessary to seek relief under the CCAA in order to:

- (a) allow the Applicants access to urgent liquidity by way of the DIP Facility;
- (b) complete the Continuing EBCL Projects;
- (c) if necessary, disclaim certain construction project contracts other than the Continuing EBCL Project contracts, which are unprofitable (the "**Discontinued EBCL Contracts**");
- (d) sell certain redundant equipment, and
- (e) develop and implement a sales and investment solicitation process, with the ultimate goal of maximizing value for the Applicants' stakeholders and the continuation of the Business as a going concern.

13. Any serious disruption to the Applicants' ability to provide construction services and the flow of funds in connection with those services will delay and likely imperil the viability of the various construction projects upon which the Applicants are currently engaged and intend to continue.

14. To that end, on April 15, 2025, the Applicants filed a NOI under the provisions of the BIA as a result of statements made by the Applicants' surety, Aviva Insurance Company of Canada ("**Aviva**") that Aviva intended to send letters to the owners of the Applicants' construction projects requiring project owners to divert all contract funds to Aviva and away from the Applicants. I understand from discussions with various project owners that, notwithstanding correspondence

from Applicants' counsel to Aviva informing them of the NOI filing and corresponding stay of proceedings, Aviva went ahead and delivered the letters to the project owners anyhow.

15. As a result of the foregoing, the Applicants believe that it is imperative that they be allowed to continue the NOI proceedings under the CCAA as quickly as possible in order to avoid any further disruption or erosion to the Applicants' operations.

16. Over the past few months, the Applicants have been in frequent discussions with two of its key stakeholders, BMO, the Applicants' senior secured lender and Aviva with a view to addressing the existing liquidity crisis. BMO is supportive of the requested relief and is supporting the Applicants through the provision of the DIP Facility. While discussions with Aviva did not result in a out of court restructuring process as hoped, the Applicants, with the assistance of their advisors and the Monitor, intend to work with Aviva in respect to the Discontinued EBCL Contracts with a view to building consensus as between BMO, Aviva and the Applicants on the appropriate path forward which will maximize value and minimize losses for all stakeholders.

## **II. BACKGROUND OF THE APPLICANTS**

### **A. The Business of the Applicants**

17. The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the "**Business**"). The Applicants bring expertise to all aspects of trenchless construction including project design and planning, project management and control, and design consultation.

18. Founded in 1947, EBCL capitalized on post-war growth in the Greater Toronto Area. Since its inception, the company has been an established industry leader in underground construction specializing in complex infrastructure projects, mainly for water and wastewater construction.

EBCL has an unmatched reputation and track-record for delivering quality workmanship and professionalism in a highly skilled and small industry.

19. Over the prior decade, the Applicants' Business grew substantially, in large part, as a result of their unparalleled expertise as well as a result of the population and corresponding housing boom in Ontario. In particular, the Applicants expanded their operations from approximately \$1 million in revenue in the 1990s to over \$80 million in adjusted revenue in 2023.

20. Today, EBCL is the oldest and largest trenchless service provider in Ontario and one of only two wholly owned Canadian trenchless companies in Ontario. EBCL is also one of only four trenchless companies that provide services in Ontario. The Applicants have completed over 2,400 projects, including completion of the largest microtunneling project in Canadian history for the Halton Region of Ontario, as well as construction of infrastructure that supplied clean drinking water to residents of the Chippewas of Nawash Unceded First Nation.

21. EBCL primarily executes work for municipalities, such as the City of Toronto, the Region of Peel, York Region, and Halton Region, on a directly negotiated basis utilizing its own equipment and products. The Applicants also work with a diverse range of other customers in the construction industry including EllisDon, Aecon, Alectra, and Metrolinx.

22. The Applicants are supported by a highly skilled and technical work force. They currently employ 82 skilled union and agency workers and 17 managerial employees. The Applicants are also supported by specialized suppliers including equipment rental, concrete, piping, and fuel suppliers. In the fiscal year ending 2024, the Applicants spent approximately \$25.2 million on their suppliers, most of which are local to Ontario.

23. The Applicants operate their Business out of four locations in Ontario:

- (a) **Head Office:** 1775 North Sheridan Way, Mississauga;

- (b) **Administrative Office:** 1576 Ifield Road, Mississauga;
- (c) **Equipment Storage and Maintenance Facility:** 960 Zelco Drive, Burlington (“**Burlington Property**”); and
- (d) **Inventory Storage Yard:** 75 Steelwell Road, Brampton (“**Brampton Property**”).

## **B. Corporate Structure of the Applicants**

24. The Applicants are comprised of four private companies, which are incorporated pursuant to the *Ontario Business Corporations Act*, RSO 1990, c B-16. All four of the companies are partially or fully owned by the same shareholder, Pennbridge Family Trust. A copy of the organizational chart of the Applicants is attached as **Exhibit “A”**. The details of the four companies are as follows:

- (a) EBCL is a private corporation that maintains its registered head office at 1775 North Sheridan Way, Mississauga, Ontario. EBCL is the principal operating company and contracting entity between the Applicants and customers for their projects. The corporate profile report for EBCL is attached hereto as **Exhibit “B”**.
- (b) Yarfield is a private corporation and maintains its registered head office at 1775 North Sheridan Way, Mississauga, Ontario. Yarfield was the management company of the Applicants but has been dormant since January 2025. The corporate profile report for Yarfield is attached hereto as **Exhibit “C”**.
- (c) Yarbridge is a private corporation and maintains a registered head office at 1775 North Sheridan Way, Mississauga, Ontario. Yarbridge is a holding company solely for the Burlington Property. The Burlington Property is used by EBCL as an equipment storage and maintenance facility for the Business. The corporate profile report of Yarbridge is attached hereto as **Exhibit “D”**.

(d) Torlan is a private corporation and maintains a registered head office at 1775 North Sheridan Way, Mississauga, Ontario. Trolan is solely a holding company for the Brampton Property. The Brampton Property is used by EBCL as an inventory storage yard for the Business. The corporate profile report for Trolan is attached hereto as **Exhibit “E”**.

**C. The Applicants’ Operating Segments**

25. Trenchless construction is a specialized form of construction that causes little to no disruption to surface activities, which makes it ideal for urban and environmentally sensitive areas. It also results in 80 to 98 percent less greenhouse gas emissions per meter of pipe than open cut construction methods, which makes trenchless construction increasingly important for environmental preservation.

26. The Applicants conduct their trenchless construction operations through four principal business segments:

| TECHNOLOGY                  | DESCRIPTION   | EXAMPLE PROJECTS  | 2024 ADJUSTED REVENUE <sup>1</sup> |
|-----------------------------|---|---|------------------------------------|
| <b>Micro Tunneling</b>      | <ul style="list-style-type: none"> <li>Hydraulic jacks push pipes through the ground behind a slurry circuit, excavating simultaneously</li> <li>Provides a flexible, structural, watertight, finished pipeline as the tunnel is being excavated</li> </ul> | Halton South Georgetown<br><br>Kitchener Jacking Project      | \$57.5mm<br><br>71.4%              |
| <b>Directional Drilling</b> | <ul style="list-style-type: none"> <li>Trenchless process where a series of rods in the ground are guided with electronic tracking</li> <li>Bore path is enlarged by a reaming process and pipes are then pulled back, leaving reams in place</li> </ul>    | Toronto Pearson Airport<br><br>Petro Canada Oakville Refinery | \$13.1mm<br><br>16.2%              |

<sup>1</sup> Many projects require multiple services. As a result, the revenue is segmented by the primary service on a project.

|                            |  |   |  |
|----------------------------|--|---|--|
| <p><b>Auger Boring</b></p> | <ul style="list-style-type: none"> <li>Rotating helical augers within the casing removes spoil</li> <li>Hydraulic jacks provide the thrust that pushes the casing through the ground</li> </ul>  | <p>London Watermain<br/>Mississauga Storm Sewers</p>  | <p>\$10.0mm<br/>12.5%</p>  |
| <p><b>Pipe Ramming</b></p> | <ul style="list-style-type: none"> <li>Installation method of choice for the toughest Type 3, and Type 4 soils and cobble filled grounds</li> <li>Involves ‘ramming’ an open-ended casing, swallowing soil rather than compacting</li> </ul> | <p>Hanlon Expressway<br/>Brantford Sanitary Sewer</p> | <p><i>Pipe ramming is primarily performed in conjunction with other services</i></p> |

**D. Overview of Material Projects**

27. The Applicants are currently working on over a dozen medium-to-large scale underground construction infrastructure projects with a combined gross contract value of approximately \$32 million. The Applicants have an additional 17 projects that they have been awarded but have not yet broken ground on with a combined contract value of approximately \$16 million.

28. In addition to their active and awarded projects, the Applicants are involved with over fifty projects that are actively being discussed or in the process of being tendered. The opportunity for future work is also significant given the pipeline of sewer and watermain work in just the Greater Toronto Area is estimated to be \$1.7 billion for 2025.

29. Any disruption to the Applicants’ ongoing operations would be detrimental to the Applicants’ completion of their current and future projects. A ripple effect may be triggered wherein the projects themselves will become imperiled as a result of being unable to find an alternative service provider since the Applicants are one of only four companies that do this work in Ontario.

**E. Licenses and Certifications**

30. In early 2020, EBCL received a Certificate of Recognition (“COR”) certification for implementing an externally audited health and safety management system. COR is a national accreditation standard that verifies full implementation of an employer’s Occupational Health and

Safety Management System. COR is often used as a condition of contract by the public and private sector across Canada and is one of the highest safety standards in Ontario.

31. To maintain COR certification, EBCL passes annual health and safety audits which requires every employee and contractor to have an active role in meeting regulatory requirements and complying with EBCL's Health and Safety Program.

32. EBCL also has an up-to-date Commercial Vehicle Operator Registration ("CVOR") issued by the Ontario Ministry of Transportation, Transportation Safety Division. CVOR is a mandatory program in Ontario that regulates and monitors the safety of commercial vehicles and drivers.

#### **F. Employees, Pension and Benefits**

33. The Applicants' Business is supported by a highly technical and skilled workforce comprised of approximately 99 employees: 17 full-time management employees, 71 union employees, and 11 agency employees. All of the Applicants' employees are employed by EBCL and are located in Ontario.

34. EBCL's employees have specialized knowledge in geology, engineering, and project management, as well as familiarity with local regulations and environmental compliance. The specialized knowledge of the employees is in part the result of steps taken by EBCL to engage foreign tradespeople with skills developed in overseas work by bringing those tradespeople to Ontario for the purpose of training and apprenticing EBCL's employees. EBCL believes that its employees represent a competitive advantage in the marketplace and an asset that, if lost, would make it difficult if not impossible to continue the Business.

35. The Applicants' unionized employees, consisting of highly skilled trades and labourers, are governed by two collective agreements with three unions:

- (a) a Collective Agreement with International Union of Operating Engineers Local 793 effective May 1, 2022 for a term until April 30, 2025. This union is for employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, maintenance, installation and repair of same, save and except for foreman, those above the rank of foreman, office and clerical staff, shop and yard employees, engineering staff and security staff working within certain geographic areas in Ontario; and
- (b) a Collective Agreement with A Council of Trade Unions Acting as the representative and agent of Teamsters' Local Union 230 and Labourers' International Union of North America, Local 183 effective May 1, 2022 for a term until April 30, 2025. The unions represent all employees save and except non-working foremen and persons above the rank of non-working foreman in the sewer and watermain industry in specific geographic areas.

36. The compensation package for unionized employees is determined by their respective collective agreements. The Applicants adhere to the requirements set out within those agreements including paying unionized employees on a weekly basis and contributing to the employee's benefit and pension plans. The Applicants pay managerial employees through direct deposit on a bi-weekly basis.

37. For the Applicants' managerial employees, the Applicants sponsor a Group Registered Retirement Savings Plan ("**Group RRSP**"), which is administered by AGF through Edward Jones. As part of the Group RRSP, EBCL (previously Yarfield) contributes an amount to the Group RRSP

based upon a percentage of an employee's employment contract. The Group RRSP has 10 members as of February 28, 2025.

38. The Applicants also provide their managerial employees with group benefits coverage through a group benefits plan administered by Sun Life Financial (the "**Benefits Plan**"). The Benefits Plan is designed to assist eligible employees and their dependents by helping to cover the cost of some routine healthcare such as prescription drugs, dental care, and vision care, as well as protect employees and their dependents in the event of a serious illness, accident or death. The Benefits Plan has 17 members as of February 28, 2025.

39. The 11 agency employees are international skilled labourers that are retained through the employment agencies, MTBM Operators and 4 Drill Group. These employees are highly specialized and are retained on a short-term basis of three to six months to augment the Applicants' own labour force. The Applicants pay the wages for these labourers on a weekly basis to the agency, who then pays the wages of the labourer.

#### **G. Leases**

40. EBCL as the operating company among the Applicants conducts business out of four locations as follows,

- (a) pursuant to a lease agreement dated October 1, 2014, EBCL leases its head office located at 1775 North Sheridan Way, Mississauga from the landlord, Attridge Transportation Inc. The lease term expired September 1, 2024 and the property is now leased on a month-to-month basis for \$9,500 per month.
- (b) EBCL leases the Burlington Property at 960 Zelco Drive, Burlington from Yarbridge. There is no written lease agreement in place, however, EBCL pays the principal and interest on the First, Second, and Third Burlington Mortgages

(defined below), as well as maintenance costs, property taxes and utility services for the property.

- (c) EBCL leases the Brampton Property at 75 Steelwell Road, Brampton from Trolan. There is no written lease agreement in place, however, EBCL pays the principal and interest on the Trolan Mortgage (defined below), as well as maintenance costs, property taxes and utility services for the property.
- (d) EBCL pays for maintenance, property taxes and utility services at the administrative office located at 1576 Ifield Road, Mississauga. There is no formal lease agreement in place. The property is owned by a director and officer of the Applicants, Carmen Yarley.

#### **H. Cash Management System**

41. The Applicants primarily conduct their banking with BMO. EBCL, Yarbridge, and Trolan each maintain a CAD bank account with BMO. EBCL also maintains a USD bank account with BMO. Yarfield maintains a bank account with Royal Bank of Canada (“**RBC**”), which is currently frozen as a result of unpaid monies owing to the Canada Revenue Agency and therefore not in use.

42. EBCL’s CAD bank account with BMO is the main operating account for the Business and is used to address day-to-day cash management requirements. Certain pre-authorized payments are debited automatically from the operating account when due, including lease payments, group benefits premiums and insurance premiums.

43. In the ordinary course of business, the EBCL account will collect receipts for services on the various construction projects on which it is engaged. All funds owed to EBCL are accounted for on a project-by-project basis. The Applicants receive most of their receivables by electronic

deposit; however, some funds are received by cheque, which are deposited into the appropriate bank account.

44. EBCL has 28 active credit cards with BMO. All of the credit cards are paid for by EBCL.

45. In connection with these CCAA proceedings, the Applicants are seeking the authority to continue to operate the above-noted cash management system. I am advised by the Proposed Monitor that it will continue to monitor the receipts and disbursements from the Applicants' bank accounts during the CCAA proceeding in its capacity as Monitor. Maintaining the existing cash management system will offer a number of benefits to the Applicants and their stakeholders, including minimizing the disruption to the Business caused by the CCAA proceedings and avoiding the need to negotiate and implement alternative banking arrangements.

### III. THE APPLICANTS' ASSETS AND LIABILITIES

46. As of August 31, 2024, the consolidated value of the Applicants' liabilities exceeds the value of their assets by approximately \$3 million.

47. A copy of the most recent financial statements of each of the Applicants is attached as follows:

- (a) independently audited financial statements of EBCL for the fiscal year ending August 31, 2024, is attached as **Exhibit "F"**;
- (b) independently compiled financial statements of Yarbridge for the fiscal year ending August 31, 2024, is attached as **Exhibit "G"**;
- (c) independently compiled financial statements of Trolan for the fiscal year ending September 30, 2024, is attached as **Exhibit "H"**; and

(d) independently reviewed financial statements of Yarfield for the fiscal year ending February 29, 2024, is attached as **Exhibit “I”**

(collectively, the “**2024 FS**”).

**A. Assets of the Applicants**

48. The 2024 FS shows that as of August 31, 2024, the Applicants had consolidated assets with a value of approximately \$80 million.

49. The assets of EBCL, as demonstrated by the 2024 FS, are as follows:

| <b>EBCL</b>                 |                              |
|-----------------------------|------------------------------|
| <b>Asset</b>                | <b>As at August 31, 2024</b> |
| Accounts Receivable         | \$52,133,869                 |
| Inventory                   | \$5,270,918                  |
| Prepaid Expenses            | \$150,128                    |
| Due from Related Parties    | \$13,184                     |
| Property, Plant & Equipment | \$13,719,315                 |
| <b>TOTAL</b>                | <b>\$71,287,414</b>          |

50. The assets of Yarfield, as demonstrated by the 2024 FS, are as follows:

| <b>YARFIELD</b>      |                                |
|----------------------|--------------------------------|
| <b>Asset</b>         | <b>As at February 29, 2024</b> |
| Cash                 | \$14,301                       |
| AR – Related Company | \$46,152                       |
| <b>TOTAL</b>         | <b>\$60,453</b>                |

51. The assets of Yarbridge, as demonstrated by the 2024 FS, are as follows:

| <b>YARBRIDGE</b> |                              |
|------------------|------------------------------|
| <b>Asset</b>     | <b>As at August 31, 2024</b> |

|                                   |                    |
|-----------------------------------|--------------------|
| Cash                              | \$11,796           |
| Prepaid Expenses & Deposits       | \$10,200           |
| Loan Due from Related Companies   | \$4,634,430        |
| Real Property (Land and Building) | \$4,736,442        |
| <b>TOTAL</b>                      | <b>\$8,392,841</b> |

52. The assets of Trolan, as demonstrated by the 2024 FS, are as follows:

| <b>TROLAN</b>           |                                 |
|-------------------------|---------------------------------|
| <b>Asset</b>            | <b>As at September 30, 2024</b> |
| Cash                    | \$1,956                         |
| Prepaid Expenses        | \$8,648                         |
| Real Property – at cost | \$274,200                       |
| <b>TOTAL</b>            | <b>\$284,804</b>                |

#### **B. Liabilities of the Applicants**

53. The 2024 FS shows that as of August 31, 2024, the Applicants had consolidated assets with a value of approximately \$83 million.

54. The liabilities of EBCL, as demonstrated by the 2024 FS, are as follows:

| <b>EBCL</b>                                |                              |
|--|------------------------------|
| <b>Liabilities</b>                         | <b>As at August 31, 2024</b> |
| Bank Loans (current)                       | \$19,529,101                 |
| Government Loans (current)                 | \$7,519,920                  |
| Accounts Payable                           | \$19,617,519                 |
| Government Remittances Payable             | \$2,848,981                  |
| Obligations Under Capital Leases (current) | \$4,952,749                  |
| Vehicle Loans (current)                    | \$101,562                    |

|  |                     |
|--|---------------------|
| Bank Loans (long-term)                       | \$287,825           |
| Government Loans (long-term)                 | \$74,700            |
| Loans from Related Parties                   | \$14,03,368         |
| Obligations Under Capital Leases (long-term) | \$1,047,912         |
| Vehicle Loans (long-term)                    | \$207,993           |
| Future Income Taxes                          | \$1,578,571         |
| <b>TOTAL</b>                                 | <b>\$72,070,201</b> |

55. The liabilities of Yarfield, as demonstrated by the 2024 FS, are as follows:

| YARFIELD                                 |                         |
|--|-------------------------|
| Liabilities                              | As at February 29, 2024 |
| Accounts Payable and Accrued Liabilities | \$146,293               |
| Government Remittance Payable            | \$1,393,548             |
| Shareholders Advances                    | \$494,298               |
| Loans – Related Company                  | \$420,000               |
| <b>TOTAL</b>                             | <b>\$2,454,139</b>      |

56. The liabilities of Yarbridge, as demonstrated by the 2024 FS, are as follows:

| YARBRIDGE                                |                       |
|--|-----------------------|
| Liabilities                              | As at August 31, 2024 |
| Accounts Payable and Accrued Liabilities | \$6,394               |
| First Mortgage Payable (current)         | \$135,527             |
| Second Mortgage Payable (current)        | \$399,996             |
| Third Mortgage Payable (current)         | \$165,000             |

|                                     |                    |
|-------------------------------------|--------------------|
| Government Remittances Payable      | \$160,323          |
| Income Taxes Payable                | \$58,512           |
| First Mortgage Payable (long-term)  | \$4,308,996        |
| Second Mortgage Payable (long-term) | \$233,351          |
| Third Mortgage Payable (long-term)  | \$2,934,957        |
| <b>TOTAL</b>                        | <b>\$8,403,056</b> |

57. The liabilities of Trolan, as demonstrated by the 2024 FS, are as follows:

| <b>TROLAN</b>                            |                                 |
|--|---------------------------------|
| <b>Liabilities</b>                       | <b>As at September 30, 2024</b> |
| Accounts Payable and Accrued Liabilities | \$8,148                         |
| Shareholders Advances                    | \$200,484                       |
| Loan – Related Party                     | \$13,184                        |
| <b>TOTAL</b>                             | <b>\$221,816</b>                |

#### **IV. THE INDEBTEDNESS OF THE APPLICANTS**

##### **A. Secured Liabilities**

58. As of December 31, 2024, the Applicants (EBCL, Trolan and Yarbridge) owe approximately \$49 million to their secured creditors. The Applicants' primary secured creditors are BMO, the BDC, Canadian Western Bank ("**CWB**"), a related party, and various entities that advanced equipment financing to the Business.

##### **i. EBCL Indebtedness to BMO**

59. BMO is EBCL's principal secured creditor. EBCL has had a relationship with BMO since 2023.

60. The majority of EBCL's liabilities to BMO consist of secured debt owing to BMO pursuant to a Credit Agreement dated June 22, 2023 and amended on July 22, 2024 and March 13, 2025 (the "**Credit Agreement**"). As of April 10, 2025, approximately \$22,273,506.58 is owed to BMO pursuant to the Credit Agreement. The Credit Agreement is attached hereto as **Exhibit "J"**.

61. The Credit Agreement provides EBCL with five facilities (collectively, the "**BMO Loan Facilities**"):

- (a) **BMO Operating Loan - \$15 million:** A demand margined revolving credit facility ("**Operating Loan**") which is to be used for general working capital, general corporate requirements and payment of transactions, up to an amount of \$15 million. The Operating Loan bears interest at Canadian prime rate plus a variable interest rate between 1.0% to 2.0% as determined by the ratio of total debt to adjusted EBITDA. As at April 10, 2025, EBCL owed approximately \$15,049,335.63 on the Operating Loan.
- (b) **BMO Capex Line - \$5 million:** A demand revolving reducing term loan which is to be used to finance capital expenditures in the normal course of business and refinancing existing debt, up to a maximum of \$5 million. The loan bears interest at Canadian prime rate plus a variable rate between 1.0% to 2.0% as determined by the ratio of total debt to adjusted EBITDA. For each drawdown under the BMO Capex Line, a separate loan account is generated to track the date of the drawdown and to define the repayment period in accordance with the Credit Agreement. For each drawdown, EBCL makes equal payments of principal amortized quarterly beginning the first full quarter following the date of drawdown over an amortization period of 7-years at a quarterly rate of nearly 3.57% of the original principal balance. As at April 10, 2025, EBCL had three active loan

accounts (i.e. drawdowns on the Capex Line) with a total of approximately \$3,035,823.67 owing.

- (c) **BMO Master Equipment Line - \$10 million:** A demand equipment leasing facility which is to be used to finance the purchase of owned equipment up to a maximum of \$10,000,000. This loan is documented in a Master Lease of Personal Property dated July 5, 2023, as amended July 19, 2023 (the "**Master Lease Agreement**"), The Master Lease Agreement is secured over the equipment that is leased to EBCL including a 2011 Boom Truck Crane, a 2017 micro tunneling system, and a 2021 micro tunneling system. The Master Lease Agreement is attached hereto as **Exhibit "K"**. As at April 10, 2025, EBCL owed \$3,448,414.86 on this line.
- (d) **BMO Treasury Line - \$1 million:** A treasury risk management facility which is to be used to facilitate hedging of foreign exchange risk and interest rate risk up to a maximum of \$1,000,000. EBCL currently owes nothing on this line.
- (e) **BMO MasterCard - \$1 million:** A corporate MasterCard for general corporate requirements up to a maximum of \$1,000,000. As at April 10, 2025, EBCL owed \$774,041.65 on this line.

62. The obligations under the BMO Loan Facilities are secured by, *inter alia*, the following:

- (a) a General Security Agreement from EBCL dated June 22, 2023, which provides BMO with a first ranking security interest over all of the tangible and intangible assets of EBCL. A copy of the General Security Agreement dated June 22, 2023 is attached hereto as **Exhibit "L"**;
- (b) a Assignment of Insurance from EBCL dated June 22, 2023;

- (c) Limited Recourse Guarantees and Securities Pledge Agreement from the shareholder of EBCL (Pennbridge Family Trust), as well as myself and my co-director and officer, Carmen Yarley;
- (d) Landlord Waivers dated June 22, 2023 from each of the landlords of the real property leased by EBCL;
- (e) various Postponement, Subordination and Standstill Agreements with related parties including myself, Ms. Yarley, and Pennbridge Holdings Inc. (“**Pennbridge Holdings**”);
- (f) a Limited Recourse Guarantee from myself in the amount of \$15 million; and
- (g) a Limited Recourse Guarantee from Ms. Yarley in the amount of \$5 million.

63. BMO, BDC and EBCL executed a Priority Agreement dated June 14, 2023 (“**Priority Agreement**”). Pursuant to the Priority Agreement, BDC postponed and subordinated its security over EBCL to the security of BMO. A copy of the Priority Agreement dated June 14, 2023 is attached hereto as **Exhibit “M”**.

64. The Ontario Personal Property Registry confirms that BMO is a registered secured creditor on EBCL’s personal property. Attached as **Exhibit “N”** is a search of the Ontario Personal Property Registry for EBCL.

65. As noted above, the Credit Agreement was amended on March 13, 2025 pursuant to a Second Amendment to Credit Agreement and Forbearance Agreement (“**Second Amendment**”) to increase the Operating Loan from \$15 million by the following amounts during the period of March 14, 2025 to May 9, 2025:

- (a) \$1 million or the U.S. Dollar equivalent amount; and

- (b) upon the completion of conditions subsequent set out in Section 3.2 of the Second Amendment, \$2 million or the U.S. Dollar equivalent amount.

66. On March 14, 2025, BMO advanced the first \$1 million under the Second Amendment, however, due to ongoing discussions amongst BMO, the Applicants, Aviva, and their advisors, BMO never advanced the additional \$2 million as BMO determined it was only willing to provide further funds on a super priority basis through the DIP Facility.

67. On April 11, 2025, BMO delivered a demand and Notice of Intention to Enforce Security pursuant to s. 244(1) of the BIA. Attached as **Exhibit "O"** is a copy of the demand and Notice of Intention to Enforce Security.

**ii. Indebtedness to BDC**

68. BDC is Yarbridge's and Trolan's principal secured creditor. BDC is also a secured creditor of EBCL as EBCL guaranteed the obligations of Yarbridge and Trolan to BDC.

**Yarbridge Mortgages**

69. Yarbridge is the holding company for the Burlington Property. Yarbridge currently has three mortgages with BDC for the Burlington Property, all of which are guaranteed by EBCL, as detailed below. As at February 28, 2025, Yarbridge owes \$7,814,144 under the three mortgages on the Burlington Property. A copy of the Parcel Register for the Burlington Property is attached hereto as **Exhibit "P"**.

70. In September 2019, Yarbridge obtained a first mortgage in the amount of \$4,925,000 from BDC for the purpose of purchasing the Burlington Property. The loan was provided pursuant to a Letter of Offer dated September 16, 2019 (Loan No. 168780-01) ("**First Burlington Mortgage**"). The First Burlington Mortgage has a fixed interest rate of 4.10% per year, which was adjusted to

a variable interest rate in September 2024. The First Burlington Mortgage is attached hereto as **Exhibit “Q”**.

71. The obligations of the First Burlington Mortgage are secured by, *inter alia*,:
- (a) a first mortgage in the principal amount of \$4,925,000 on the Burlington Property;
  - (b) a general assignment of rents for the Burlington Property;
  - (c) a general security agreement from Yarbridge providing a first security interest in all present and after-acquired personal property of Yarbridge;
  - (d) a guarantee from EBCL, which is supported by a general security agreement providing a security interest in all present and after-acquired personal property of EBCL. The Guarantee dated September 26, 2019 and General Security Agreement dated September 26, 2019 are attached as **Exhibit “R”**;
  - (e) a guarantee from a related entity, Pennbridge Holdings, which guarantee is secured by a general security agreement granting a security interest in all present and after-acquired personal property of Pennbridge Holdings to BDC; and
  - (f) a joint and several guarantee of myself and Ms. Yarley for \$500,000.
72. As at February 28, 2025, Yarbridge owes \$4,378,019 under the First Burlington Mortgage.
73. In April 2020, Yarbridge obtained a second mortgage in the amount of \$2 million from BDC for the purpose of providing working capital in the wake of COVID-19. The loan was provided pursuant to a Letter of Offer dated April 7, 2020, as amended on March 2, 2023 (Loan No. 168780-02) (the **“Second Burlington Mortgage”**). The Second Burlington Mortgage has a variable interest rate of “BDC’s Floating Base Rate”, being an annual rate of interest announced by BDC

through its offices from time to time, minus a 1.75% variance. The Second Burlington Mortgage is attached hereto as **Exhibit “S”**.

74. The obligations under the Second Burlington Mortgage are secured by, *inter alia*:
- (a) a second mortgage in the principal amount of \$2 million on the Burlington Property;
  - (b) a general assignment of rents for the Burlington Property;
  - (c) an Acknowledgement and Confirmation of Existing Security from Yarbridge, Pennbridge Holdings, and EBCL dated April 20, 2020, which is attached as **Exhibit “T”**;
  - (d) a guarantee from EBCL dated April 20, 2020, which is attached as **Exhibit “U”**;
  - (e) a guarantee from Pennbridge Holdings; and
  - (f) a joint and several guarantee from myself and Ms. Yarley for \$500,000.

75. As at February 28, 2025, Yarbridge owes \$411,125 under the Second Burlington Mortgage.

76. In August 2022, Yarbridge obtained a third mortgage in the amount of \$3.3 million from BDC for the purpose of advancing funds to EBCL. The loan was provided pursuant to a Letter of Offer dated August 5, 2022, as amended April 15, 2024 (Loan No. 168780-03) (the “**Third Burlington Mortgage**”). The Third Burlington Mortgage is attached hereto as **Exhibit “V”**.

77. The obligations under the Third Burlington Mortgage are secured by, *inter alia*:
- (a) a third mortgage in the principal amount of \$3.3 million on the Burlington Property;
  - (b) a general assignment of rents for the Burlington Property;

- (c) an Acknowledgement and Confirmation of Existing Security from Yarbridge, Pennbridge Holdings, and EBCL dated August 25, 2022, which is attached as **Exhibit “W”**;
- (d) a guarantee from EBCL dated August 25, 2022, which is attached as **Exhibit “X”**;
- (e) a guarantee from Pennbridge Holdings; and
- (f) a joint and several guarantee from myself and Ms. Yarley for \$500,000.

78. As at February 28, 2025, Yarbridge owes \$3,025,000 under the Third Burlington Mortgage.

79. As of the date of this affidavit, Yarbridge is current on its monthly mortgage payments on all three mortgages on the Burlington Property.

80. The Ontario Personal Property Registry confirms that BDC is the first registered secured creditor on Yarbridge’s personal property. Attached as **Exhibit “Y”** is a search of the Ontario Personal Property Registry for Yarbridge.

### **Trolan Mortgage**

81. Trolan is the holding company for the Brampton Property. Trolan currently has one mortgage (Loan No. 284695-01) with BDC for the Brampton Property in the amount of \$5 million (the “**Trolan Mortgage**”), which is guaranteed by EBCL. A copy of the Parcel Register for the Burlington Property is attached hereto as **Exhibit “Z”**.

82. The Trolan Mortgage was advanced pursuant to a Letter of Offer dated September 11, 2024, as amended on October 22, 2024. The Trolan Mortgage will be repaid in monthly

instalments commencing September 25, 2025 and accrues interest at a rate of 6.05% per annum. Attached hereto as **Exhibit “AA”** is a copy of the Letter of Offer and its amendments.

83. The obligations under the Trolan Mortgage are secured by, *inter alia*,:
- (a) a first mortgage in the principal amount of \$5 million on the Brampton Property;
  - (b) a general assignment of rents for the Brampton Property;
  - (c) a general security agreement from Trolan providing a first security interest in all present and after-acquired personal property of Trolan dated September 26, 2024, which is attached as **Exhibit “BB”**; and
  - (d) a limited guarantee from EBCL for 60% of the Trolan Mortgage, which is supported by a general security agreement providing a security interest in all present and after-acquired personal property of EBCL. The Guarantee dated September 26, 2024 and General Security Agreement dated September 26, 2024 are attached as **Exhibit “CC”**.

84. As at February 28, 2025, Trolan owes the principal amount of \$5 million to BDC under the Trolan Mortgage.

85. The Ontario Personal Property Registry confirms that BDC is the first registered secured creditor on Trolan’s personal property. Attached as **Exhibit “DD”** is a search of the Ontario Personal Property Registry for Trolan.

**iii. Indebtedness to CWB**

86. EBCL has two loans with CWB for the purpose of buying certain equipment (the **“CWB Equipment Loan”**):

- (a) a Master Lease Agreement between CWB Leasing Inc. and EBCL dated June 29, 2022 with respect to a tunnel machine for a principal loan amount of \$1,040,955 to be paid in monthly installments commencing June 30, 2022 and ending June 30, 2027; and
- (b) a Promissory Note dated August 12, 2022 wherein EBCL borrows from CWB the principal sum of \$1,066,823.22, which is repayable in monthly instalments commencing September 16 2022 and ending July 16, 2026.

Attached as **Exhibit “EE”** is a copy of the CWB Equipment Loan documentation.

87. The CWB Equipment Loan is secured over certain equipment identified in the loan documentation. The Ontario Personal Property Registry for EBCL confirms that the security of CWB is registered. Attached as **Exhibit “N”** is a search of the Ontario Personal Property Registry for EBCL.

88. As of February 28, 2025, approximately \$1,295,300 is owed by EBCL to CWB pursuant to the CWB Equipment Loan.

#### **iv. Secured Loan to a Related Company**

89. EBCL has a loan from a related entity and indirect owner of the Applicants, Pennbridge Holdings, pursuant to a promissory note dated December 31, 2010 and other intercompany loans. The loans are payable on demand and are non-interest bearing. As of December 31, 2024, in excess of \$7.3 million is owed by EBCL to Pennbridge Holdings.

90. The loans with Pennbridge Holdings are secured by a General Security Agreement dated December 31, 2010, which provides Pennbridge Holdings a charge over all present and future

personal property of EBCL. The Ontario Personal Property Registry for EBCL confirms that the security of Pennbridge Holdings is registered.

**v. Equipment Financing**

91. In addition to the above secured debts, EBCL has secured obligations owing to various entities that provide EBCL with equipment financing. The equipment financiers include Meridian OneCap Credit Corp, HSBC Bank Canada, RBC, Kennedy National Leasing, Liebherr, Ford Credit Canada Company, ATCO Structures & Logistics Ltd., and Element Fleet Management II Inc. Collectively, these equipment financiers are owed approximately \$7 million.

92. The security of these equipment financiers has been registered in the Ontario Personal Property Registry for EBCL. Attached as **Exhibit “N”** is a search of the Ontario Personal Property Registry for EBCL.

**B. HST, Payroll Obligations, and Property Taxes**

93. As at February 28, 2025, the Applicants EBCL and Yarfield are in arrears of their HST remittances in the amount of approximately \$457,000 and \$1,339,000 respectively. Trolan and Yarbridge have no outstanding HST or excise obligations.

94. The Applicants have no arrears of property taxes for the Burlington Property and the Brampton Property. Property taxes are paid quarterly with the next payment being due in or about July 2025 for both properties.

95. EBCL and Yarfield have outstanding source deduction remittances owing in the approximate amount of \$1,146,000 for the period ending February 28, 2025 and \$1,178,000 for the period ending February 28, 2025 respectively.

96. Wages continue to accrue in the normal course between weekly and bi-weekly pay periods. Group benefits are paid up to and including April 4, 2025. Amounts owed for the Group RRSP as paid up to and including April 4, 2025, with the next pay period being May 4, 2025.

**C. Unsecured Obligations of the Applicants**

97. The Applicants' primary unsecured liabilities include, among other things,
- (a) approximately \$19 million in trade payables accrued in the ordinary course, including payables related to equipment, concrete, piping, and construction services;
  - (b) in excess of \$4.4 million owing to related investors pursuant to unsecured loans payable. The investors are primarily related individuals who have advanced funds on an unsecured basis as an investment in the Applicants;
  - (c) approximately \$7.5 million owed by EBCL to His Majesty the King in Right of Canada pursuant to a Contribution Agreement between His Majesty the King in Right of Canada and Earth Boring dated September 14, 2022, as amended by an Amending Agreement dated March 23, 2023, a Second Amending Agreement dated May 24, 2023 and a Third Amending Agreement dated August 30, 2023. The loan was pursuant to the *Jobs and Growth Fund* for the purpose of supporting Southern Ontario organizations transition to a green economy and enhance their competitiveness. A copy of the amended Contribution Agreement is attached as **Exhibit "FF"**; and
  - (d) approximately \$87,000 owed from EBCL to BDC pursuant to a Letter of Offer dated May 17, 2023. The loan was pursuant to BDC's Canada Digital Adoption Program

and was for the purpose of developing EBCL's use of digital technology. A copy of the Letter of Offer is attached as **Exhibit "GG"**.

#### **D. Contingent Obligations of the Applicants**

98. The Applicants' primary contingent liabilities include the following legal actions:

- (a) an action between EBCL and the Regional Municipality of Durham with respect to a contract to perform work in relation to a pipe watermain across highway 401. EBCL commenced the action seeking approximately \$1.4 million for goods and services supplied and the Regional Municipality of Durham has counterclaimed for approximately \$592,409.37;
- (b) an action by GFL Environmental Inc. against EBCL seeking damages in the amount of \$523,469.83;
- (c) an action by Pacific Paving Limited against EBCL seeking damages in the amount of \$497,678.27;
- (d) an action by Keller Foundations Ltd. against EBCL seeking damages of approximately \$1.45 million, of which \$680,000 is a construction lien claim; and
- (e) an action between EBCL and Michels Canada Co. with respect to 16<sup>th</sup> Avenue Truck Sanitary Sewer Rehabilitation (Phase 2) Project. EBCL seeks \$3.4 million and Michels Canada Co. has counterclaimed for approximately \$2.75 million.

#### **E. Bonded Obligations**

99. Aviva is the surety for the Applicants. Certain construction projects in which EBCL is currently engaged have bonds which are issued by Aviva (the "**Bonded Projects**") in a total amount of \$150,000,000.

100. The Bonded Projects include:

- (a) Halton Region - South Georgetown Wastewater Servicing;
- (b) Bronte – Yonge Sheppard TTC Station;
- (c) Peel Region – Caledon Project;
- (d) Lincoln – Lincoln Watermain;
- (e) Primrose – Simcoe County Road 21;
- (f) Narraganset Bay Commission;
- (g) City of Hamilton – Garner Road; and
- (h) Region of Peel – Trenchless Crossing at Heart Lake, Elgin and Torbram Roads.

101. The Applicants and Pennbridge Holdings are party to a Master Surety Agreement with Aviva pursuant to which Aviva has agreed to provide EBCL with bonding for its projects. A copy of the Master Surety Agreement is attached as **Exhibit “HH”**. In accordance with the Master Surety Agreement, Aviva has provided EBCL with performance bonds, as well as labour and material bonds on the Bonded Projects.

102. I am advised by the Applicants’ lawyer, Caitlin Fell, that although BMO is the senior secured lender of EBCL, Aviva may be a trust claimant with a priority entitlement to recover any funds on the Bonded Projects because it may take or have taken assignment of the claims it may pay under the bonds in respect of the Bonded Projects and would therefore be subrogated to the position of the Lien Claimants (as defined in the Lien Regularization Order).

## **V. FINANCIAL DIFFICULTIES AND NEED FOR CCAA PROTECTION**

### **A. Financial Challenges Facing the Applicants**

103. The Applicants began experiencing financial difficulties in 2023. Rapid expansion of the Business increased capital needs significantly. In particular, the Applicants experienced nearly 300% growth in the span of the three years from 2021 to 2024. During that time, the Applicants broke ground on approximately 30 infrastructure projects with expected total contract revenues of over \$130 million.

104. With the rapid expansion of the Business, capital needs increased dramatically. The Applicants' Business is capital intensive and requires the funding of upfront costs on the majority of their projects (including labour, supplies, and equipment). Notwithstanding this, the Applicants are only paid back over the life of a contract, with profit arising out of the 10% of the total contract value, which is normally kept as holdback and paid to the Applicants upon completion. As a result, the Applicants' cash flow was significantly constrained as a result of the expansion.

105. The Applicants' cash flow challenges have been further compounded by four unexpected external events: (i) EBCL's first meaningful loss on a project (the Caledon project) in the Applicants' history, (ii) EBCL covering the costs of a customer error while waiting for reimbursement from its subcontractors and insurance companies, (iii) a delay in a significant number of the Applicants' projects as a result of changes in government funding, and (iv) a delay in projects as a result of the newly imposed tariffs.

#### **(i) The Caledon Project**

106. In 2022, EBCL broke ground on a mixed microtunneling and boring project for the Regional Municipality of Peel in Caledon, Ontario (the "**Caledon Project**"). The Caledon Project

was operating on a 24/6 work schedule, which is typical for microtunneling and/or earth boring construction projects.

107. In or around the beginning of 2023, the Caledon Project ran into difficulties due to local complaints about the 24/6 work schedule. Accordingly, the work schedule was revised to only be from 7 a.m. to 7 p.m. The change in work schedule necessitated a change in the length and cost of the project for EBCL. As is common in the construction industry, all changes to a project are documented and approved by way of change order. At that time, the project manager reported to EBCL's management that he had obtained an approved change order for both the extension of the time of the Caledon Project as well as the additional costs necessitated by the delay and the additional labour required.

108. In and around the end of 2023, EBCL's management learned from the project manager that while the approved change order covered the project length extension, it did *not* cover the additional costs associated with the extension. At this juncture, EBCL's management approached the client for support for the additional costs but were unable to obtain additional funding as EBCL has not adhered to the change order process in the first instance.

109. The inability to recover costs associated with the extended length of the project led to EBCL suffering a loss of approximately \$8 to \$9 million.

110. To remedy the mismanagement of the Caledon Project moving forward, EBCL replaced the project manager on the project and prepared a revised project timeline with appropriate oversight and control procedures. EBCL also performed an extensive audit of project costs, schedules, and technical assessments. EBCL's audit disclosed that the project manager's mismanagement of the Caledon Project had led to significant cost overruns, project delays and technical inefficiencies. In particular, EBCL discovered that the project manager had been able to hide the issues on the Caledon Project by pre-billing Peel Region for major work items that were

not completed. These improper pre-billings created a negative revenue cycle for subsequent months as actual work had to be performed without corresponding incoming payments.

111. In and around the end of 2024, EBCL also discovered that the former project manager improperly installed certain piping by failing to weld the pipes. EBCL bore the burden of an additional \$6 million in costs to perform the remedial work.

112. EBCL did not walk away from the Caledon Project which would have mitigated its losses. Instead, to preserve its relationship with the Peel Region, a significant customer for the company, EBCL worked to complete the project. The Caledon Project has not yet been completed. The anticipated completion date is June/July 2025.

113. As of the date of this affidavit, EBCL has suffered a loss of approximately \$15 million on the Caledon Project. The Caledon Project is the *only* project that has caused a meaningful loss to EBCL in the more than 75 years it has been in business. EBCL is and has been in ongoing discussions with the Region of Peel with a view to working with it to complete the project.

114. To avoid similar issues on other projects in the future, EBCL performed a comprehensive business review and developed a new project management process, which involves a modified bidding and pricing model, enhanced technology, a centralized procurement processes and an expansion of its own fleet of equipment.

**(ii) Losses from Insurance Claims**

115. In June and July 2022, EBCL learned that its survey subcontractor Monteith & Sutherland (“**M&S**”) made two separate survey errors on two jobs: the Portlands project and the Halton project. As a result of the incorrect survey coordinates, EBCL incurred significant costs and time delays to address the subcontractor’s errors.

116. In order to minimize disruption to the projects for the benefit of the municipalities, EBCL funded the up-front costs to resolve the issues. EBCL subsequently sought reimbursement from M&S's insurance companies. EBCL spent a total of approximately \$22 million to resolve the issues on the two projects: \$15 million to resolve the issues on the Portland project and \$7 million for the Halton project.

117. To date, EBCL has only received reimbursement for \$10 million of the \$15 million spent on the Portland project. EBCL remains in ongoing discussions with M&S with respect to the repayment of the \$7 million incurred on the Halton project.

118. In August 2024, the Halton project also experienced a sinkhole, which cost EBCL approximately \$7 million to address. EBCL is in the process of trying to recoup the funds from Halton's wrap-up insurance policy.

**(iii) The Changes to Ontario's Housing-Enabling Water Systems Fund**

119. Historically, the Applicants' clients have relied on funding from the Government of Ontario to help finance certain infrastructure projects. One such program that provides government funding is Ontario's Housing-Enabling Water Systems Fund ("**HEWSF**").

120. In 2024, EBCL was scheduled to begin various projects for clients that were receiving funding from HEWSF. However, on January 29, 2024, the Government of Ontario introduced changes to the eligibility requirements for HEWSF to disqualify projects that have already started construction before being approved for the funding. Specifically, the eligibility requirements were modified as follows:

- For applications received on or before April 19, 2024, projects could start once approved for funding and by no later than September 30, 2024, and

- For applications received between April 19, 2024 and November 1, 2024, projects could start once approved for funding and by no later than September 30, 2025.<sup>2</sup>

121. As a result of these changes, a significant number of the projects were delayed from 2024 to 2025 or 2026. Accordingly, \$11.4 million worth of the Applicants' expected revenue from 2024 was pushed to 2025-2026. This shift in revenue was detrimental to the Applicants' liquidity.

**(iv) Delays from the Imposition of Tariffs**

122. Commencing in January 2025, many project tenders that were expected to be available were held back due to recessionary issues impacting the marketplace such as the introduction of tariffs.

123. With the imposition of tariffs, the construction industry generally is grappling with how best to structure contracts to minimize the applicable tariffs and promote the use of Canadian products and businesses. As a result, although there is a significant amount of water and wastewater infrastructure work scheduled to occur in 2025, this work has been delayed while the industry determines how best to address the new tariffs.

**B. The Applicants Sale and Refinancing Efforts**

124. In and around October 2024, the Applicants retained a financial advisor, Stifel Nicolaus Canada Inc. ("**Stifel**"), to conduct a sale and investment solicitation process ("**Sale Process**") to canvass the market for possible refinancing or sale opportunities.

125. Stifel commenced the Sale Process in and around December 2024. Stifel's sale efforts involved creating a confidential information memorandum, which it circulated to 146 potential investors including 126 financial sponsors and 20 strategic partners.

<sup>2</sup> [Housing-Enabling Water Systems Fund](#) [**emphasis added**]

126. The Sale Process generated significant interest in the Applicants' Business from a range of strategic and financial parties. In particular, the Applicants received 94 executed non-disclosure agreements ("NDA") from interested parties. The parties who executed a NDA were granted access to a comprehensive virtual data room to conduct due diligence on the investment opportunity.

127. The Sale Process had a deadline of January 23, 2025 for parties to submit an expression of interest detailing, among other things, the anticipated purchase price, the proposed structure, sources of financing, and closing conditions. By that deadline, one party submitted a verbal expression of interest for a purchase of the Business. Since that time, the Applicants, along with their advisors, have remained in extensive discussions with the one party that submitted an expression of interest, as well as a second party that has submitted a letter of interest for refinancing the Business and three other parties that are actively interested in a possible sale or refinancing transaction. Those five parties continue to conduct their due diligence.

### **C. Liquidity Issues**

128. Unfortunately, in the midst of the Sale Process and the due diligence of the interested parties, the Applicants' cash flow continued to decrease. By on or around April 7, 2025, the Applicants available liquidity had dwindled to \$1,085,997, which was insufficient to sustain the Applicants ongoing obligations including payroll. Accordingly, it became clear that the Applicants required urgent financing to address their liquidity constraints.

129. To assist the Applicants in dealing with their stakeholder and liquidity constraints, the Applicants engaged Steinberg as CRO in March 2025. In addition, in the weeks leading up to this filing, the Applicants have been in ongoing discussions with both BMO and Aviva with a view to trying to solve the Applicants' liquidity crisis through an out of court restructuring process. Through these discussions, BMO advised that it was only willing to provide the Applicants with further

funding through the form of the DIP Facility and with the benefit of a Court ordered super-priority charge. Similarly, Aviva was only willing to fund a portion of the accounts payable that it was legally obligated to pay under the Bonded Projects as well as a portion of the go forward working capital needs of the Applicants, both of which were insufficient for the Applicants to operate in the ordinary course outside the benefit of CCAA protection.

130. Given the Applicants were unable to reach a deal with Aviva and BMO, and to avoid further enforcement action by Aviva, EBCL filed the NOI on April 15, 2025. A copy of the NOI is attached hereto as **Exhibit “II”**.

131. Despite their recent liquidity challenges, the Applicants are optimistic about their future. The Applicants are one of only four companies that provide trenchless construction services in Ontario. They are also one of only two Canadian companies in the industry, which is important given the industry may shift to prefer Canadian companies to avoid having to incur the additional cost of tariffs.

132. In addition, EBCL remains a leader in the industry. The size of the industry is significant given the continued growth of Ontario’s population. In particular, the Greater Toronto Area has approximately \$1.7 billion in sewer and watermain work scheduled for 2025; the Applicants will be a crucial service provider in completing that work.

133. Further, the *Construction Act* has been to decrease the delay of the release of the holdback on projects. Specifically, the *Construction Act* now requires a mandatory annual release of holdbacks for all contracts. As a result, the Applicants will no longer need to wait years for the completion of a project to receive their holdback and can instead expect to receive all holdbacks on an annual basis.

**D. The Applicants are Insolvent**

134. As described in this affidavit, due to their deteriorating financial condition, the Applicants have insufficient liquidity to meet their obligations as they become due. Among other things, the Applicants liabilities exceed their available liquidity of \$1,085,997.

135. The Applicants' key assets, including the equipment, real estate, future contracts and accounts receivable, are not liquid and cannot be easily monetized without significant diminishment of value and disruption to the Applicants and their stakeholders. Further, the value of certain key assets such as future contracts and accounts receivable are likely to be significantly impaired or have no value if the Applicants are unable to maintain a going concern.

136. If the relief is not granted, the Applicants will be unable to make payroll or payments to their critical suppliers, resulting in an immediate cease of operations—which would be incredibly costly, in some cases prohibitively so, to halt and then resume.

**E. Purpose of the CCAA Application**

137. After considering the various options available to the Applicants, the Applicants determined that a filing under the CCAA is in the best interests of the Applicants and their stakeholders.

138. The purpose of the proposed CCAA proceeding is to restructure the Applicants' balance sheet while maintaining going concern operations to preserve employment, maximize recovery for stakeholders, and a shut down of Ontario's largest and oldest trenchless service provider.

139. The Applicants believe that relief under the CCAA is in the best interests of the Applicants, their creditors, and their stakeholders for the following reasons, among others:

- (a) the Applicants are insolvent and are unable to meet their obligations at they become due;
- (b) the Applicants require the protection of the CCAA and the assistance of restructuring professionals to develop a strategic restructuring solution, as well as the breathing room to do so;
- (c) without the protections of the CCAA, the Applicants' creditors are likely to take enforcement steps against the Applicants, which will disrupt the operation of the Business and profoundly impact the Applicants' current projects;
- (d) the Applicants require immediate interim financing, which financing would not otherwise be available on reasonable terms and in a timely manner without the accompanying Court-ordered Charges that are available under the CCAA; and
- (e) the involvement of a Court-appointed Monitor under the CCAA will lend stability and assurance to the Applicants' stakeholders, including their customers, suppliers, lenders, and employees.

140. If the requested relief is granted under the CCAA, the Applicants intend to work with the Proposed Monitor and the CRO to implement a comprehensive operational and financial restructuring plan with appropriate milestones for such restructuring. Among other things, the Applicants intend to continue their sale and investment solicitation process.

141. EBCL presently intends to disclaim the Discontinued EBCL Contracts on the basis that it has determined, with the assistance of the CRO, that the cost to complete each of those projects exceeds the remaining balance payable on the contracts. In such circumstances, the customer will then be in a position to make a claim on any performance bond, and EBCL or a purchaser will be available to enter into a completion contract under the performance bond, if appropriate.

**F. Cash Flow Forecast**

142. With the assistance of the CRO and the Proposed Monitor, the Applicants have conducted a cash flow analysis to determine the amount required to finance their ordinary course business operations, assuming the Initial Order is granted, over the 12-week period from the week ending April 18, 2025 to July 4, 2025 (the “**Cash Flow Forecast**”). I understand that the Cash Flow Forecast will be attached to the first report of the Proposed Monitor.

143. The Cash Flow Forecast demonstrates that the Applicants require approximately \$2.2 million in interim financing as early as April 18, 2025 and a total of \$5.5 million over the 12-week period.

144. The Cash Flow Forecast demonstrates that if the relief sought under the Initial Order is granted, the Applicants will have sufficient liquidity to meet their ordinary course obligations over the Initial Stay Period.

**VI. RELIEF BEING SOUGHT**

145. At the initial hearing, the Applicants will seek the minimum relief necessary to continue operations through to the Comeback Hearing, at which time expanded relief will be sought.

**A. Stay of Proceedings**

146. The Applicants require a Stay of Proceedings, including in respect of secured parties, to prevent creditors from taking enforcement steps. The intention of the Stay of Proceedings is to provide the Applicants with the necessary breathing room to preserve the status quo and pursue a viable restructuring plan and complete their ongoing construction projects.

147. In the absence of a Stay of Proceedings, the Applicants will be unable to complete their current construction projects, which may imperil the projects given there is a limited number of companies that can provide the services that the Applicants provide. The business interruption

and resumption costs for the Applicants' customers would be substantial and would inevitably have a negative effect on the customers' own business and stakeholders.

148. The Initial Stay Period is also critical to maximizing the realization of the Business for creditors and stakeholders and avoiding the destruction of value that would result from a shut-down of operations. If the Business is forced to shut down, the Applicants would immediately suffer an irreparable loss in asset value given that their primary assets—their goodwill and reputation, client relationships, and accounts receivable—require an operating Business to retain value.

149. The Cash Flow Forecast demonstrates that the Applicants will have sufficient cash to operate over the Initial Stay Period with the availability of the DIP Facility. In the meantime, the Applicants continue to work with due diligence and in good faith to complete a restructuring.

#### **B. Appointment of BDO as Monitor**

150. The Applicants seek the appointment of BDO as Monitor. BDO has been overseeing and investigating the Applicants' operations in the weeks leading up to this filing and is well versed in the operations and financial challenges of the Business.

151. BDO has consented to act as Monitor, subject to this Court's approval. I understand the consent of BDO will be attached to the report of the Proposed Monitor.

152. I am advised by Clark Lonergan that BDO is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and is not precluded from acting as Monitor as a result of any restrictions under subsection 11.7(2) of the CCAA.

**C. Charges**

153. The Applicants seek the following Charges in the proposed Initial Order: an Administration Charge, a DIP Lender's Charge, a Directors' Charge, and a Lien Charge. The Applicants propose that each of the Charges constitute a charge on all of the Applicants' Property. The Applicants further propose that the Charges rank in priority to all other Encumbrances (as defined in the Initial Order).

154. The Applicants propose that the priority of the Charges, as among them, be as follows:

- (a) first, the Administration Charge (to the maximum amount of \$300,000);
- (b) second, the DIP Lender's Charge (to the maximum amount of \$2.2 million);
- (c) third, the Directors' Charge (to the maximum amount of \$200,000); and
- (d) fourth, the Lien Charge.

155. The proposed quantum of the Charges is limited to relief that is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the Initial Stay Period until the Comeback Hearing. It is the Applicants' intention to seek at the Comeback Hearing an amended Initial Order increasing the quantum of the Charges to cover the Applicants' needs over the restructuring period as follows:

- (a) first, the Administration Charge (to the maximum amount of \$600,000);
- (b) second, the DIP Lender's Charge (to the maximum amount of \$5.5 million); and
- (c) third, the Directors' Charge (to the maximum amount of \$400,000).

**D. Administration Charge**

156. The Applicants seek a Court-ordered Administration Charge over their Property, up to a

maximum amount of \$300,000, to secure the fees and disbursements incurred by the Proposed Monitor, the CRO, counsel to the Proposed Monitor, and counsel to the Applicants in connection with the CCAA proceeding. At the Comeback Hearing, the Applicants will seek to increase the Administration Charge to \$600,000.

157. The Applicants request that the Administration Charge rank in priority to all other Encumbrances (as that term is defined in the Initial Order) and Charges.

158. The Applicants have relied heavily upon each of the restructuring professionals that will be beneficiaries of the Administration Charge during the preparation of filing these CCAA proceedings. Each of these professionals have contributed, and will continue to contribute, significant value to the advancement of the CCAA proceedings and the completion of a successful restructuring.

159. The Administration Charge is necessary to ensure that the Applicants have the continued expertise, knowledge and participation of the restructuring professionals during the Initial Stay Period, including to effectively liaise with creditors, and assist in other restructuring initiatives. Each of the restructuring professionals who are the beneficiaries of the Administration Charge have a critical and discrete role in the restructuring of the Applicants.

160. The Applicants have worked with the Proposed Monitor to estimate the quantum of the Administration Charge. Based on those discussions, I believe that the quantum of the Administration Charge is fair and reasonable in the circumstances as it is commensurate with the expected complexity of the Applicants' Business and anticipated restructuring.

#### **E. Approval of the DIP Facility and DIP Lender's Charge**

161. The Cash Flow Forecast demonstrates that the Applicants require approximately \$2.2 million in interim financing to meet ordinary course of business expenses and to fund the CCAA

proceeding during the Initial Stay Period.

162. The Applicants have secured debtor-in-possession financing from the DIP Lender to fund the Applicants' operational and restructuring expenses during the restructuring period, subject to various terms and conditions as described in the DIP Term Sheet. I understand a copy of the DIP Term Sheet will be attached to the report of the Proposed Monitor.

163. The DIP Term Sheet represents the best available interim financing arrangement that could be arranged by the Applicants within the time frame needed to meet the Applicants' cash flow needs particularly given it is unlikely any other party would provide interim financing.

164. The key terms and conditions of the DIP Term Sheet are as follows:

- (a) the DIP Lender is the Applicants' senior secured creditor, BMO;
- (b) a maximum loan amount of \$5.5 million, with an Initial Advance up to a principal amount of \$2.2 million;
- (c) interest accruing at a rate of the Canadian Prime Rate then in effect at the Bank of Montreal plus 4.5% per annum, compounded and calculated monthly;
- (d) a termination date of the earlier of (i) July 31, 2025 (or such later date as the DIP Lender in its discretion may agree to in writing with EBCL); (ii) the date on which (a) the stay of proceedings under the CCAA proceedings is lifted without the consent of the DIP Lender, or (b) the CCAA Proceedings are terminated for any reason; (iii) the closing of a purchase and sale of substantially all of the assets or shares of EBCL which has been approved by an order entered by the Court; (iv) the implementation of a plan in the CCAA proceedings approved by an order entered by the Court; (v) the refinancing of the DIP Facility upon the written consent

of the DIP Lender; (vi) the date on which the CCAA Proceedings are terminated or are converted into a proceeding under the *Bankruptcy and Insolvency Act* (Canada), or the stay of proceedings expires without extension; (vii) the payment in full of the obligations owing to the DIP Lender; or (viii) the occurrence of an Event of Default; and

(e) a commitment fee of \$100,000.

165. The DIP Facility is expected to provide sufficient liquidity to allow the Applicants to operate and meet their obligations during the pendency of the CCAA proceedings.

166. The DIP Lender requires all obligations under the DIP Term Sheet to be secured by a Court-ordered priority charge, namely the DIP Lender's Charge. The DIP Lender's Charge will secure all the funds advanced to the Applicants under the DIP Facility. The DIP Lender's Charge will not secure any obligations incurred prior to the filing of the NOI.

167. The amount of the DIP Lender's Charge requested is necessary and limited to what is reasonably necessary for the continued operations of the Business in the ordinary course of business during the CCAA proceeding. Without the DIP Lender's Charge, the DIP Lender will not provide the DIP Facility resulting in the Applicants' inability to finance their operations leading to bankruptcy, which would be detrimental to the Applicants' stakeholders.

168. The Proposed Monitor has advised that it is supportive of the approval of the DIP Term Sheet and the corresponding DIP Lender's Charge.

#### **F. Directors' Charge**

169. The proposed Initial Order contemplates the establishment of a super-priority Directors' Charge on the Property in the amount of \$200,000 to protect the directors and officers against

obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the directors' or officers' gross negligence or wilful misconduct. The Applicants will seek to amend the Directors' Charge to \$400,000 at the Comeback Hearing under the proposed Amended and Restated Initial Order.

170. To ensure the ongoing stability of the Applicants' Business during the CCAA proceedings, the Applicants require the continued participation of their directors and officers who manage the Business and commercial activities of the Applicants. The directors and officers of the Applicants have considerable institutional knowledge and valuable experience. They have long-standing relationships with the Applicants' suppliers, employees, and other stakeholders, as well as knowledge gained throughout the growth of the Business that cannot be replicated or easily replace.

171. The Applicants have no director and officer liability insurance. I believe that obtaining the same after an insolvency filing would likely be prohibitively difficult and expensive, if at all possible.

172. Given there is no insurance, my continued involvement in this proceeding as a director and officer is conditional upon the granting of the Directors' Charge. I also understand from my co-director and officer, Ms. Yarley, that her continued involvement in this proceeding as a director and officer is also conditional upon the granting of the Directors' Charge.

173. The initial quantum of the Directors' Charge sought is equivalent to approximately two weeks of the Applicants' payroll, including source deductions, which is the only reasonably anticipated potential exposure of directors and officers for Initial Stay Period. This estimate does not include any other potential sources of liability as a result of legislation in relation to the Applicants or their assets and operations, including goods and services tax, sales taxes, health and safety, environmental, customs and other matters, for which the Applicants anticipate no

potential director and officers' liability during the Initial Stay Period.

174. The Applicants worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believe that the Directors' Charge is reasonable and appropriate in the circumstances. The Directors' Charge is proposed to rank after the Administration Charge and the DIP Lender's Charge, but ahead of any existing security granted by the Applicants in favour of their secured creditors. I have been advised by counsel that the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

**G. Payment of Pre-Filing Amounts**

175. The Applicants are seeking authorization to pay, with the written approval of the Proposed Monitor, amounts owing to their suppliers for critical goods or services actually supplied to the Applicants prior to the filing date if, in the opinion of the Applicants and the Proposed Monitor, such payment is necessary to maintain the uninterrupted operations of the Business. The Applicants have reflected these payments in their Cash Flow Forecast.

176. The Applicants rely heavily on contractors who provide specialized construction services. These contractors are necessary to the uninterrupted operation of the Business.

177. Given the technical and specialized nature of the Applicants' operations, there are few vendors who can supply some of the specific services that the Applicants require at a reasonable cost and in a timely manner.

178. Due to the Applicants' cash-flow pressures, the Applicants have failed to pay some of their critical suppliers for services provided prior to the filing of the CCAA proceeding. On review of these amounts with the Proposed Monitor, the Applicants believe it is necessary to pay the pre-filing amounts owed to the critical suppliers to maintain their services notwithstanding the stay of proceedings.

179. If these critical suppliers are not paid their pre-filing arrears, they will abruptly stop providing services, which will result in the Applicants facing a material risk to their Business given that these suppliers are critical and cannot easily be replaced.

#### **H. Stay of Performance Bonds**

180. The Applicants seek a stay of enforcement or calls on the performance bonds on the Continuing EBCL Projects (collectively, the “**Performance Bonds**”), except with the written consent of the Monitor, or with leave of this Court.

181. The Applicants believe that they are in compliance with their obligations on the Continuing EBCL Projects and a critical part of the planned restructuring is the continuation of those projects.

182. The Applicants are unaware of any breach or default of any of the Performance Bonds and have not been notified of any default under the Performance Bonds. As such, the stay on the enforcement of Performance Bonds is a preventative measure that is intended to provide stability to the Applicants as they restructure their Business. In particular, any disruption to the Continuing EBCL Projects would detrimentally impact the ongoing operations and funding of EBCL to the prejudice of the Applicants and their stakeholders.

183. The CCAA proceeding and the DIP Facility is intended to ensure that the Applicants continue to perform their obligations on the Continuing EBCL Projects. In such circumstances, the stay on Performance Bonds is intended to prevent precipitous enforcement steps and to facilitate discussions and proper arrangements with contractual counterparties (if needed) to maintain the going concern nature of the Applicants and their operations.

## I. Lien Regularization Order

184. As a business operating in the construction industry, the Applicants are party to agreements with other construction counterparts, including trades, subtrades, and suppliers, who may or may not be in a position to register liens against the projects on which the Applicants are working, and the Applicants' interests in the proceeds of those projects, in Ontario, being the jurisdiction in which the Applicants operate. The Applicants seek to streamline the process through which certain Lien Claimants may assert their rights and interests as against the Applicants in the Lien Regularization Order.

185. I understand that the *Construction Act* may in certain circumstances give rise to the ability of certain parties to register liens in respect of holdbacks and/or on property that is the subject of the projects involving EBCL, or to give notice of a lien in the case of projects involving government or municipal property. The Applicants regularly deal with such liens in their ordinary course of business. In certain situations, the Applicants may also have to place their own liens on projects for non-payment of accounts and/or services provided (including potentially for accounts and/or services provided post-CCAA filing).

186. Instead, the proposed Lien Regularization Order provides for a process whereby Lien Claimants will be entitled to a Court-ordered charge which replicates the protection Lien Claimants are entitled to under the *Construction Act*. The proposed Lien Regularization Order (i) stays Lien Claimants from registering liens against the Continuing EBCL Projects; and (ii) provides that the statutory rights of Lien Claimants to register a construction lien are substituted with a Court-ordered Lien Charge. The Lien Charge is equal in value to a lien that could have otherwise been registered in accordance with the *Construction Act*. The Lien Charge is intended to rank behind the Charges. In exchange, the cash flow from the projects at issue is not interrupted and will be paid over for the benefit of the Applicants and their stakeholders.

187. The Applicants believe such a process best protects the interests of the stakeholders without placing undue administrative and financial burden on the estate of the Applicants.

188. As at the filing date, there are approximately 238 suppliers and 10 subcontractors on the Continuing EBCL Projects that could potentially assert liens in respects of such projects.

189. The Applicants are concerned that any lien registrations against them or their clients' properties may negatively impact the Applicants' restructuring efforts. In certain circumstances, including situations where liens have been bonded off, notices of liens or the actual placement of liens with respect to the Continuing EBCL Projects may disrupt or delay the flow of funds to the Applicants or from the Applicants' customers to their other providers. Any potential non-payment, delay in payment, or exercise of set-off rights by the Applicants' customers due to the actual or threatened registration of liens will expose the Applicants to additional short-term liquidity risks that could jeopardize their restructuring efforts.

190. In addition, having to address and seek to (i) lift the stay of proceedings to allow Lien Claimants to comply with limitation periods under the *Construction Act*, and/or (ii) discharge liens filed against the Continuing EBCL Projects both before and after the commencement of these CCAA proceedings would distract from and potentially disrupt the Applicants' restructuring efforts while putting a further strain on the Applicants' financial and operational resources.

191. The terms of the proposed Lien Regularization Order sought by the Applicants are intended to provide the Applicants and their respective stakeholders with appropriate protections and flexibility to ensure that the disruption to the flow of funds and their restructuring efforts is minimized, and that the rights of current and potential Lien Claimants are recognized.

192. I am advised by Ms. Fell that BMO is not supportive of extending the terms of the proposed lien regularization order to projects other than the Continuing EBCL Projects without an

acceptable agreement with Aviva with respect to the funding of the professional and other costs in connection with the administration of such an order on those further projects. If such an agreement is reached, the Applicants will, if supported by the Monitor, seek to extend the application of the order sought to further projects.

193. I understand that the Proposed Monitor supports the granting of the Lien Regularization Order. As of the date hereof, there are no outstanding liens on the Bonded Projects that have not been bonded off already.

**J. Appointment of the CRO**

194. The Applicants seek the appointment of the CRO in these proceedings, with the support of the Monitor and the DIP Lender, to assist the Applicants' management to, among other things, (i) develop and implement an operational restructuring of the Applicants; and (ii) assist in negotiations and discussions with surety providers.

195. The proposed CRO is Steinberg, the firm that has been already currently assisting the Applicants in the capacity as financial advisor since March. Steinberg has provided valuable assistance to the Applicants and their secured creditors leading up to the commencement of the within proceeding.

196. As financial advisor to the Applicants, Steinberg is well qualified to act as CRO and has been reviewing the Applicants operations in preparation for this filing. I have been advised by BMO and the Monitor that they are supportive of the appointment and engagement of Steinberg as the CRO.

197. I understand a copy of the Engagement Agreement between the Applicants and the CRO (the "**CRO Engagement**") will be attached to the Report of the Proposed Monitor. Pursuant to the CRO Engagement, among other things:

- (a) The CRO will assist with the Applicants operational restructuring including taking steps to improve operations and profitability, evaluating and implementing the sale of EBCL's excess assets, assisting in discussions with surety providers, communicating with stakeholders, and assisting with materials necessary for the CCAA proceeding;
- (b) the CRO is entitled to a monthly fee of \$75,000 (plus \$20,000 per rate premium, the "**Monthly Rate Premium**"), plus applicable taxes including HST (the "**Monthly Fees**") as well as all out-of-pocket expenses. The CRO only earns the Monthly Rate Premium if the CRO can demonstrate that pre-filing payrolls have been decreased by at least \$20k per month; and
- (c) the Monthly Fees of the CRO are to be secured by the Administration Charge.

198. Any success fee of the appointed sales advisor will be approved as part of a motion to approve a sale and investment solicitation process.

#### **K. Stay of Proceedings with Respect to Pennbridge Holdings**

199. In addition to the four Applicants, the companies operate alongside a related entity, Pennbridge Holdings (defined herein). This entity is the beneficiary of the Pennbridge Family Trust (which owns all or substantially all of the shares of each of the Applicants). The corporate profile report for Pennbridge Holdings is attached as **Exhibit "JJ"**.

200. The primary debt obligations of Pennbridge Holdings are to BMO for the BMO Loan Facilities, BDC for the mortgages on the Burlington Property, and Aviva for indemnity obligations on the bonds. Pennbridge Holdings otherwise has no liabilities that need to be restructured.

201. The Applicants are concerned that a CCAA proceeding may impact Pennbridge Holdings given that it is the indirect owner of the Applicants and is also a party to some of the same

indemnity agreements and guarantees that are stayed as against the Applicants under the CCAA. Accordingly, to ensure stability through the CCAA proceeding, a non-applicant stay is being sought to avoid any party from taking steps against Pennbridge Holdings for the pendency of these proceedings. Without a third-party stay, the attention of management will necessarily be diverted to dealing with claims against Pennbridge Holdings, which would have a cascading effect on the Applicants that could jeopardize the restructuring.

**VII. CONCLUSION**

202. I swear this affidavit in support of the Applicants' requested relief and for no other or improper purpose.

**SWORN REMOTELY** by **EUGENE WOODBRIDGE** stated as being located in the City of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 16th day of April, 2025, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

Signed by:  
*Gabrielle Schachter*  
88545D85499D4AA

A Commissioner for taking Affidavits.  
Gabrielle Schachter

DocuSigned by:  
*Eugene Woodbridge*  
896E3B9A56B14A6...

**EUGENE WOODBRIDGE**

**IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36 AS AMENDED**

Court File No. **153**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED ET AL.**

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

Proceedings commenced at Toronto

**AFFIDAVIT OF EUGENE WOODBRIDGE  
(Sworn April 16, 2025)**

**RECONSTRUCT LLP**

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**Lawyers for the Applicants**

THIS IS **EXHIBIT "D"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W



Court File No. CV-25-00741419-00CL

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

THE HONOURABLE )

WEDNESDAY, THE 28<sup>TH</sup>

JUSTICE CAVANAGH )

DAY OF MAY, 2025 )

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED (individually, an "**Applicant**" and collectively, the "**Applicants**")

**SISP APPROVAL ORDER**

**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order approving, among other things, the procedures for the Sale and Investment Solicitation Process in respect of the Applicants attached hereto as Schedule "A" (the "**SISP**") was heard this day by judicial videoconference.

**ON READING** the affidavit of Eugene Woodbridge sworn May 23, 2025 and the exhibits thereto (the "**Woodbridge Affidavit**"), and the second report of BDO Canada Limited dated May 27, 2025 (the "**Second Report**"), in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel to Bank of Montreal, the Applicants' senior secured lender, and such other counsel as were present, no one appearing for any other person although duly served as appears from the affidavit of service of Alina Stoica sworn May 23, 2025, as filed,

**SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP or the Third Amended and Restated Initial Order granted by Justice Cavanagh dated May 28, 2025 (the “**TARIO**”).

#### **ENGAGEMENT OF THE SALES ADVISOR**

3. **THIS COURT ORDERS** that PricewaterhouseCoopers Corporate Finance Inc. is hereby appointed as the sales advisor (“**Sales Advisor**”) in respect of the Applicants and shall have the powers and obligations set out in the engagement agreement between the Applicants and the Sales Advisor dated May 20, 2025 (“**Sales Advisor Engagement**”), a copy of which is attached to the Woodbridge Affidavit.

4. **THIS COURT ORDERS** that the Sales Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**Sales Advisor Charge**”) on the Property, which charge shall not exceed an aggregate total amount of \$400,000, as security for their professional fees and disbursements incurred at their standard rates and charges, in accordance with the terms of the Sales Advisor Engagement.

#### **APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS**

5. **THIS COURT ORDERS** that the SISP (subject to such amendments in accordance with the terms of the SISP) be and is hereby approved and the Sales Advisor, the Monitor, and the Applicants are hereby authorized to implement the SISP pursuant to the terms thereof.

6. **THIS COURT ORDERS** that the Sales Advisor, the Monitor, and the Applicants are authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

7. **THIS COURT ORDERS** that each of the Monitor, the Sales Advisor, the Applicants and their respective affiliates, partners, employees, directors, representatives, and agents shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any person in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor, the Sales Advisor or the Applicants, as applicable, in performing their obligations under the SISP, as determined by this Court.

8. **THIS COURT ORDERS** that in implementing the SISP, the Sales Advisor and the Monitor shall have all of the benefits and protections granted to it under the CCAA, the TARIO, and any other order of the Court in the within proceedings.

9. **THIS COURT ORDERS** that, pursuant to section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS), the Monitor, the Sales Advisor, the Applicants and their respective counsel are hereby authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors (each a “**SISP Participant**”) and to their advisors, or any interested party that the Monitor, the Sales Advisor or the Applicants consider appropriate, but only to the extent required to provide information with respect to the SISP in these proceedings.

10. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, the Monitor shall not take possession of the Property or be deemed to take possession of the Property.

#### **PROTECTION OF PERSONAL INFORMATION**

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor, the Sales Advisor, the Applicants and their respective advisors are hereby authorized and permitted to disclose personal information of identifiable individuals (“**Personal Information**”) to a SISP Participant and to its advisors, including human resources and payroll information, records pertaining to the Applicants’ past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction in the SISP. Each SISP Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation. Each SISP Participant to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP.

#### **APPROVAL OF THE MONITOR’S FEES AND ACTIVITIES**

12. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated April 16, 2025, the First Report of the Monitor dated April 23, 2025, and the Second Report of the Monitor and the activities of the Monitor as set out therein be and are hereby approved provided, however,

that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

13. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Second Report be and are hereby approved.

#### **GENERAL**

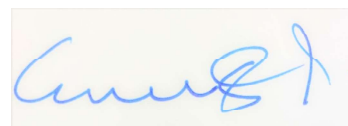
14. **THIS COURT ORDERS** that the Monitor, the Sales Advisor or the Applicants may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under the SISP.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

18. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order without any need for entry and filing.



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**Schedule "A"**  
**SISP Procedures**

[*See next page.*]

## Schedule “A”

### Sale Investment Solicitation Process Procedures for the business and/or assets of Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd. (collectively, the “Company”)

#### Overview of the Company

1. The Company is an industry leader in underground construction for complex infrastructure projects in Ontario. The Company is engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the “**Business**”). The Company works primarily for municipalities, but also works with a diverse range of other customers in the construction industry to provide critical gas and electrical pipelines, and water and waste management infrastructure throughout the province.
2. On April 17, 2025, the Company sought and obtained protection pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) and was granted an Initial Order by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), as may be amended, restated, or modified from time to time (the “**Initial Order**”). The Initial Order, among other things, appointed BDO Canada Limited as monitor of the Company (the “**Monitor**”) and approved an interim financing facility from Bank of Montreal (the “**DIP Lender**”).
3. On May 28, 2025, the Court granted an order (the “**SISP Approval Order**”): (i) authorizing the Monitor, with the assistance of the Company, to undertake a sale and investment solicitation process (“**SISP**”) to solicit offers for a sale, recapitalization, or refinancing of the Company’s property, assets, and undertaking (collectively, the “**Property**”), and/or its Business; and (ii) approving the appointment of PricewaterhouseCoopers Corporate Finance Inc. as sales advisor (the “**Sales Advisor**”) to assist the Monitor and the Company in the implementation of the SISP.
4. The Property includes the real properties municipally known as 960 Zelco Drive, Burlington, Ontario, and legally described in PIN 07035-0005 and 75 Steelwell Road, Brampton, Ontario, and legally described in PIN 14028-0023 (together, the “**Real Property**”). The Real Property is subject to first-ranking charges in favour Business Development Bank of Canada (“**BDC**”), subject only to the Administration Charge and Directors’ Charge granted pursuant to the Initial Order.
5. Among other things, the SISP Approval Order approved the procedures set out in this Schedule (the “**SISP Procedures**”) for the solicitation of offers (each, a “**Bid**”) for the acquisition of the Property and/or the Business, or the restructuring, recapitalization, or refinancing of the Business.

#### Objectives and Commencement of the SISP

6. The SISP is intended to solicit interest in and opportunities for a restructuring, recapitalization, sale, or refinancing of the Company’s assets and Business operations (the “**Opportunity**”). The Opportunity may include one or more of the following: a restructuring, recapitalization, investment, sale, refinancing, and/or investment in the Company, including the Company’s Property and Business operations. For greater clarity,

- this can include a whole or partial payment or assumption of the debt owing to Bank of Montreal ("**BMO**"), including any financing provided in its role as DIP Lender.
7. Any transaction consummated pursuant to the SISP will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sales Advisor, the Company, or any of their respective directors, officers, agents, advisors, or other representatives unless otherwise agreed in a definitive agreement.
  8. All of the Company's right, title, and interest in and to any of its Property sold pursuant to any transaction(s) contemplated herein will be sold free and clear of all liens, security interests, mortgages, charges, and other encumbrances, except those expressly assumed by a purchaser, pursuant to a Court order approving such sale.
  9. These SISP Procedures contemplate consultation with the Applicants' principal creditors, BMO and BDC, or any assignee of their secured indebtedness (in such capacities, the "**Consultation Parties**"), at various stages. Notwithstanding anything else in these SISP Procedures, such consultation, and the provision of confidential information about the status of the SISP and any potential or actual bids or Transactions shall only occur to the extent the Consultation Party confirms in writing prior to the Phase I Bid Deadline that they do not intend to participate as a bidder in the SISP. The Consultation Parties shall keep all confidential information disclosed to them and the content of all consultations strictly confidential. The Consultation Parties shall act in good faith and reasonably at all times in respect of this SISP. All confidential information shall be destroyed or returned immediately after the termination of the SISP.
  10. BMO and any other secured creditor of the Company shall have the right (subject to compliance with the terms of this SISP) to credit bid their secured debt against the assets secured thereby up to the full face value of such secured lender's claims, including principal, interest and any other obligations owing to such secured lender; provided that any such secured lender shall be required to: (a) pay in full in cash, or assume (with the consent of the holder of the priority claim), any obligations of the Company in priority to its secured debt; and (b) pay appropriate consideration for any assets of the Company which are contemplated to be acquired and that are not subject to such secured lender's security.
  11. For greater certainty, the Sales Advisor is entitled to provide the Consultation Parties the details of and/or copies of the Binding Offers (as defined below) received and shall be entitled to consult with the Consultation Parties in respect of such Binding Offers and the Auction, if any, as long as:
    - (a) The Consultation Parties confirm in writing to the Sales Advisor that they are not participating, directly or indirectly, as a Bidder (as defined below) in the SISP (other than providing potential financing to a Bidder if requested by a Bidder); and
    - (b) If either of the Consultation Parties are potentially financing a Bidder(s) in the SISP, the applicable party confirms in writing to the Sales Advisor that the respective Consultation Party will not provide the Bidder(s) with any information the Consulting Parties receive from the Sales Advisor regarding other Bidders and the offers they made.

## Timeline

12. The following table sets out the key milestones and deadlines under the SISP, which milestones and deadlines may be extended or amended by the Monitor, in its discretion, by up to two (2) weeks without Court approval, provided that the DIP Lender has provided its written consent. The Monitor shall also obtain the prior written consent of the DIP Lender before seeking court approval to modify the SISP.

| Milestone  | Deadline  |
|--|---|
| Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below) and access to VDR (as defined below) | As soon as practicable following the date of the SISP Approval Order and by no later than June 2, 2025. |
| Phase I Bid Deadline (non-binding letter of intent)  | June 20, 2025   |
| Phase II: Commencement of Due Diligence for Selected Bidders   | June 23, 2025   |
| Phase II Bid Deadline (binding offer)  | July 18, 2025   |
| Selection of Successful Bid (assuming No Auction)  | July 21, 2025   |
| Definitive Transaction Agreement   | July 25, 2025   |
| Hearing of the Sale Approval Motion / Transaction Execution Date   | Subject to availability of the Court  |
| Closing Date Deadline (outside date)   | August 11, 2025   |

Any extensions or amendments (other than the Closing Date Deadline) shall be communicated to all Bidders in writing and posted on the Monitor's Website at: <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/earth-boring-co-limited>

### Solicitation of Interest: Notice of the SISP

13. The Sales Advisor shall be entitled, but not obligated, to arrange for a notice to be published in any newspaper or industry journal as the Monitor considers appropriate, if it believes that such advertisement would be useful in the circumstances.
14. The Sales Advisor, with the assistance of the Company and the Monitor, and in consultation with the DIP Lender has prepared:
- (a) a list of potential buyers ("**Interested Parties**");

- (b) an initial offering summary ("**Teaser Letter**");
  - (c) a form of non-disclosure agreement ("**NDA**");
  - (d) a confidential information memorandum describing the opportunity ("**CIM**"); and
  - (e) a virtual data room (the "**Data Room**"), which shall include a form of asset purchase agreement ("**Template APA**") to be used by Bidders (defined below) to make Qualified Purchase Bids (defined below).
15. The Sales Advisor will manage all communications with Interested Parties as well as Potential Bidders, Qualified Bidders, the Successful Bidder (each as defined herein and collectively, "**Bidders**" and each, a "**Bidder**"), prior to and after receipt of binding offers ("**Binding Offers**"). This shall include facilitating the delivery of all communications, contacting prospective Bidders and providing them with the Teaser Letter and CIM, coordinating the execution of NDAs, facilitating any requests for tours of the project sites, managing the process of answering inquiries from prospective Bidders, coordinating any presentations that may be requested by Potential Bidders (defined below), soliciting and tracking all Binding Offers, and reviewing and negotiating transaction documentation.
16. The Sales Advisor has sent or will be sending the Teaser Letter and the form of NDA to all applicable Interested Parties and will send them to any other Interested Party who requests a copy of the Teaser Letter and NDA, or who is identified by the Sales Advisor, the Company, or the Monitor as an Interested Party, as soon as reasonably practicable following such request or identification, as applicable.
17. The Monitor will post the SISP Procedures and Teaser Letter on the Monitor's Website by no later than June 2, 2025.

### **Sale or Investment Opportunities**

18. Bidders will have the opportunity to submit a bid in the form of either a Sale Proposal or an Investment Proposal (each as defined below). Sale Proposals and Investment Proposals may be in respect of only some of the Property, and any such proposal will not be precluded from consideration as an acceptable Bid.
19. In the event of an offer to acquire all or part of the Property (a "**Sale Proposal**"), all of the Company's relevant right, title, and interest in and to the Property may be acquired pursuant to an approval and vesting order of the Court, including pursuant to a reverse vesting order if necessary and appropriate, free and clear of all pledges, liens, security interests, charges, options, hypothecs, mortgages, and interest thereon, except to the extent otherwise set forth in a definitive purchase agreement executed with a Successful Bidder.
20. In the event of an offer for a broad range of executable transaction alternatives (restructuring, recapitalization, and/or refinancing including a payout or assumption of the indebtedness owing to BMO) involving an investment in the Company (an "**Investment Proposal**") for any or all of the Business, such proposal can be implemented by way of a combined Plan and Arrangement.

## SISP - Phase I

21. During Phase I of the SISP, the Sales Advisor, with the assistance of the Company and the Monitor, will solicit non-binding letters of intent (“**LOIs**”) from Interested Parties to acquire or refinance the Business and/or Property (a “**Potential Transaction**”).
22. Any Interested Party who wishes to participate in the SISP must provide to the Sales Advisor:
  - (a) an NDA executed by it, and a letter setting forth the identity of the Interested Party, the contact information for such Interested Party, and full disclosure of the direct and indirect principals of the Interested Party. The NDA shall include an acknowledgement of the terms of the SISP; and
  - (b) if the Monitor considers it necessary, such form of financial disclosure that allows the Monitor to make a reasonable determination as to the Interested Party's financial and other capabilities to consummate a sale transaction.
23. Any Interested Party that: (i) has delivered an executed NDA; and (ii) has provided the Sales Advisor with satisfactory evidence of its capability—based on the availability of financing, its experience, and other relevant considerations—to be able to consummate a sale transaction pursuant to the SISP, will be determined by the Sales Advisor in consultation with the Monitor to be a “**Potential Bidder**”.
24. The Sales Advisor will provide each Potential Bidder with a copy of the CIM and access to the Data Room. Potential Bidders must rely solely on their own independent review, investigation, and/or inspection of all information and of the Business and/or Property in connection with their participation in the SISP and any transaction they enter into with the Company. The Company, the Sales Advisor, the Monitor, and their respective directors, officers, agents, and advisors make no representation or warranty whatsoever as to the information (including, without limitation, with respect to its accuracy or completeness): (i) contained in the CIM or the Data Room; (ii) provided through the due diligence process or otherwise made available pursuant to the SISP; or (iii) otherwise made available to a Potential Bidder except to the extent contemplated in any definitive documentation duly executed and delivered by the Successful Bidder (as defined below) and the Company, and approved by the Court.
25. At any time during the SISP, the Monitor may, in its reasonable business judgment, eliminate a Potential Bidder from the SISP, in which case such party will no longer be a Potential Bidder for the purposes of the SISP.
26. The Sales Advisor shall afford each Potential Bidder such access to applicable due diligence materials and information pertaining to the Business and Property of the Company as the Sales Advisor deems appropriate in its reasonable business judgment. Due diligence access may include management presentations, access to the Data Room, on-site inspections, and other matters which a Potential Bidder may reasonably request and which the Sales Advisor in consultation with the Monitor deems appropriate. The Sales Advisor will designate one or more representatives to coordinate all reasonable requests for additional information and due diligence access from each Potential Bidder and the manner in which such requests must be communicated. The Sales Advisor shall not be obligated to furnish any information relating to the Business or the Property to any person other than to Potential Bidders. For the avoidance of doubt, selected due diligence materials may be withheld from certain Potential Bidders during Phase I or II of the SISP,

if the Sales Advisor, in consultation with the Monitor and the Company, determines such information to represent proprietary or sensitive competitive information related to the Business and/or the Property of the Company that should not be provided to a Potential Bidder.

### **Insider Bids**

27. In order to protect the integrity of the SISP, any direct or indirect shareholder, director or senior management of the Company (each an “**Insider**”) may, subject in all respects to such Insider’s compliance with the SISP Procedures, make a bid pursuant to the SISP, provided however that any such intention to bid must be communicated to the Monitor in writing by no later than 5:00 p.m. (Toronto time) on June 19, 2025 (one day before the non binding agreements are due).
28. Any and all communications (including, among other things, emails, letters, meetings and conversations) between any Insider and any Potential Bidder shall be subject to the Monitor or Sale Advisor’s direct supervision.
29. Notwithstanding any term of these SISP Procedures, if an Insider submits a bid in the SISP, the Sales Advisor and the Monitor shall not share any information with such Insider with respect to the SISP, including any Potential Bidders, Phase I Bids, Phase I Qualified Bids, Phase II Bids, Phase II Qualified Bidders, or the Successful Bid, and notwithstanding any provision herein, shall not be required to consult with the Company.

### **Phase I Bid Deadline**

30. A Potential Bidder that wishes to make an offer pursuant to the SISP must deliver by email a non-binding LOI (a “**Phase I Bid**”) to the Sales Advisor so as to be received by the Sales Advisor not later than 5:00 PM (Toronto Time) on June 20, 2025 (the “**Phase I Bid Deadline**”), with a copy to each of the persons specified in Schedule "B" hereto.

### **Qualified Phase I Bids**

31. A Phase I Bid will be considered a qualified bid only if it meets the following criteria (the “**Phase I Bid Criteria**”):
  - (a) it is submitted on or before the Phase I Bid Deadline in accordance with paragraph 30 herein;
  - (b) it is accompanied by a letter setting forth:
    - (i) the identity of the Bidder and full disclosure of any entities and/or individuals that control the Bidder, and/or the beneficial owner (if any) with the power, directly or indirectly, to cause the direction of the management and policies of the Bidder;
    - (ii) a specific indication of the sources of debt and/or equity capital/financing for the transaction (as applicable), and preliminary evidence of the sources of financing of the purchase price, the availability of such financing, steps necessary and timing to obtain such financing, and any related contingencies, and financial information that would allow the Monitor to make a reasonable determination as to the Bidder’s financial capabilities to consummate the transaction;

- (iii) a statement that the Bidder expects to be able to consummate a sale, investment, or refinancing transaction pursuant to the SISP on or before the Closing Date Deadline (as defined herein); and
    - (iv) such other information as reasonably requested by the Sales Advisor in consultation with the Company;
  - (c) the Phase I Bid identifies or contains the following:
    - (i) the purchase price in Canadian dollars, including details of all Property to be purchased and liabilities to be assumed by the Bidder;
    - (ii) any anticipated approvals and consents required to close the Potential Transaction and any anticipated impediments to such approvals or consents;
    - (iii) specific due diligence required to be conducted during Phase II, if any;
    - (iv) all conditions to closing sought by the Bidder; and
    - (v) any other terms or conditions that the Bidder believes are material to the transaction.
- 32. In addition to the requirements set out in paragraph 31 herein, a Phase I Bid in respect of a Sale Proposal must include:
  - (a) a detailed listing and description of the Property to be included in the Sale Proposal, and a detailed listing of the Property to be excluded from the Sale Proposal;
  - (b) the low and high range of the proposed Purchase Price for such Sale Proposal, the proposed allocation of the Purchase Price among the applicable Property (including specifically, in respect of each Real Property parcel, if applicable), and an explanation of what contingencies and variables may influence the range in which the final Purchase Price will fall (each as defined herein);
  - (c) details as to the Purchase Price for all or part of the Property subject to the Sale Proposal;
  - (d) a list of the key material contracts and leases, if any, the Prospective Bidder wishes to acquire, and the Prospective Bidder's proposed treatment of any related "cure costs";
  - (e) whether the proposed transaction is to be implemented by way of an "Approval and Vesting Order" ("**AVO**") or a "Reverse Vesting Order" ("**RVO**"); and
  - (f) a description of any liabilities to be assumed by the Prospective Bidder, and the Prospective Bidder's estimated value of such assumed liabilities.
- 33. In addition to the requirements set out in paragraph 31 herein, a Phase I Bid in respect of an Investment Proposal must include:
  - (a) a description of the structure of the Investment Proposal;

- (b) a description of the type and amount of consideration to be allocated to secured creditors, unsecured creditors, and shareholders of the Company;
  - (c) the proposed treatment of the Company's stakeholders; and
  - (d) a description of any liabilities to be assumed by the Prospective Bidder, and the Prospective Bidder's estimated value of such assumed liabilities.
34. For greater certainty, the Sales Advisor shall be entitled, either prior to or following the Phase I Bid Deadline, to seek to clarify the terms of a Phase I Bid, or with respect to any of the other requirements of paragraphs 30, 31, 32, and 33 above, and the Sales Advisor in consultation with the Monitor may accept a revised and/or clarified Phase I Bid, provided that the initial Phase I Bid was received prior to the Phase I Bid Deadline.

### **Assessment of Phase I Bids**

35. Promptly after the Phase I Bid Deadline, the Sales Advisor in consultation with the Company, the Monitor, the DIP Lender and BDC, to the extent any Bid purports to be in respect of or affects the Real Property:
- (a) will review and assess the Phase I Bids to determine whether they are qualified (such qualified bids being the "**Qualified Phase I Bids**" and the Bidder thereof, a "**Qualified Phase I Bidder**"); and
  - (b) may request clarification of the terms of the Phase I Bids.
36. In assessing whether the Phase I Bids received are Qualified Phase I Bids, the Sales Advisor in consultation with the Company, Monitor, the DIP Lender and BDC, to the extent any Bid purports to be in respect of or affects the Real Property (which shall include providing a summary of the terms of each Qualified Phase I Bidder Bid to the DIP Lender and the terms of any such Bids affecting or in respect of the Real Property, to BDC), will consider, among other things, the following:
- (a) whether they meet the Phase I Bid Criteria;
  - (b) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;
  - (c) the demonstrated financial capability of the Bidder;
  - (d) the conditions to closing of the proposed transaction; and
  - (e) the estimated time required to complete the proposed transaction and whether, in the Monitor's reasonable business judgment, the transaction is reasonably likely to close on or before the Closing Date Deadline.
37. If the Sales Advisor in consultation with the Monitor, the DIP Lender and BDC, to the extent any Bid purports to be in respect of or affects the Real Property, determines that one (1) or more Qualified Phase I Bids are received, then the SISF shall proceed to Phase II.

## SISP - Phase II

38. During Phase II of the SISP, each Qualified Phase I Bidder will be granted further access to such due diligence materials and information as the Sales Advisor in consultation with the Monitor in their reasonable business judgment, determines is appropriate and available.

### Phase II Bid Deadline and Phase II Bids

39. Qualified Phase I Bidders that wish to make a formal binding Offer pursuant to the SISP (a "**Phase II Bid**") must submit by email such Offer so as to be received by the Sales Advisor not later than 5:00 p.m. (Toronto Time) on July 18, 2025 (the "**Phase II Bid Deadline**"), with a copy to each of the persons specified in Schedule "B" hereto.
40. In order to be considered a "**Qualified Phase II Bid**", the offer shall meet the following criteria (collectively, the "**Phase II Bid Criteria**"):
- (a) be binding and irrevocable until the earlier of: (i) 30 days after the Phase II Bid Deadline, and (ii) approval by the Court of the Successful Bid;
  - (b) include a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor, or such other form of deposit as is acceptable to the Monitor), payable to the Monitor in trust, in an amount equal to 10% of the purchase price contemplated by the Phase II Bid (the "**Deposit**"). All Deposits submitted by Phase II Bidders who did not submit the Successful Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The Deposit forming part of the Successful Bid shall be dealt with in accordance with the asset purchase agreement submitted by the Successful Bidder;
  - (c) provide contact information (including an email address) for the Bidder, and disclose the identity of each entity (including its ultimate shareholders and/or sponsors) that is bidding for the Business and/or Property or otherwise participating in a Phase II Bid, and the complete terms of any such participation;
  - (d) include written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction or transactions comprising the Phase II Bid, that will allow the Sales Advisor to make a determination as to the bidder's financial and other capabilities to consummate the proposed transaction;
  - (e) include acknowledgments and representations of the Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Business and/or Property, the Company, or otherwise, prior to making its bid; (ii) it has relied solely upon its own independent review, investigation, and/or inspection of the Business and/or Property (including, without limitation, any documents in connection therewith) in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory, or otherwise, regarding the Business and/or Property or the Company or the completeness of any information provided in connection therewith, except as expressly contemplated in any definitive documentation duly executed by the Successful Bidder and approved by the Court;

- (f) include written evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the transaction contemplated by the Phase II Bid;
  - (g) include a description of any desired arrangements with respect to transition services that may be required from the Company in connection with the transaction, including funding for same; not be subject to any conditions precedent except those that are customary in a transaction of this nature; not be conditional upon approval by the Court of any bid protection, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;
  - (h) be governed by the laws of the Province of Ontario and the laws of Canada applicable therein; and
  - (i) be received by the Phase II Bid Deadline; and contemplate closing the transaction set out therein on or before August 11, 2025 (the "**Closing Date Deadline**").
41. In addition to the Phase II Bid Criteria set out at paragraph 40 above, a Sale Proposal submitted by a Qualified Bidder will be considered a "**Qualified Purchase Bid**" only if the Sale Proposal complies with all of the following:
- (a) it includes a duly authorized and executed purchase and sale agreement (a "**Definitive Sale Agreement**"), together with a markup outlining and highlighting all proposed changes from the Template APA, specifying the purchase price, expressed in Canadian dollars, including the cash component thereof and/or the liabilities to be assumed by the Bidder (or the combination of both - the "**Purchase Price**"), together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and such ancillary agreements;
  - (b) it contains a detailed listing and description of the Property to be included in the Sale Proposal, or a detailed listing of the Property to be excluded from the Sale Proposal, as well as the value and breakdown of the allocation of the Purchase Price;
  - (c) it does not include any request or entitlement to any break-up fee, expense reimbursement, or similar type of payment;
  - (d) it is not conditional on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing, and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;
  - (e) it fully discloses the identity of each entity that is bidding, or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
  - (f) it includes evidence, in form and substance reasonably satisfactory to the Sales Advisor of authorization and approval from the Qualified Bidder's board of directors

- (or comparable governing body) with respect to the submission, execution, delivery, and closing of the transaction contemplated by the Sale Proposal;
- (g) it contains details of the proposed number of employees of the Company who will become employees of the Qualified Bidder, and the proposed terms and conditions of employment to be offered to those employees;
  - (h) it includes an acknowledgement and representation that the Qualified Bidder will assume the obligations of the Company under executory contracts, unexpired leases, and licenses proposed to be assigned (or clearly identifies the particular contracts, leases, and licenses of the Company, as applicable, that the Qualified Bidder wishes not to assume, or alternatively wishes to assume); contains full details of the Qualified Bidder's proposal for the treatment of related cure costs; and specifies which such assumptions are a condition of closing;
  - (i) to the extent not addressed elsewhere, it includes the proposed treatment of stakeholders;
  - (j) it provides for the closing of the Qualified Purchase Bid by no later than the Closing Date Deadline, or such later date or time as the Monitor, in accordance with the SISF Procedures, may determine appropriate;
  - (k) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Sales Advisor, and names the Company as a third-party beneficiary of any such commitment letter, with recourse by the Company and the Monitor against such parent entity or sponsor;
  - (l) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance, and any anticipated impediments for obtaining such approvals; and
  - (m) it contains other information reasonably requested by the Sales Advisor or the Monitor.
42. In addition to the Phase II Bid Criteria set out at paragraph 40 above, an Investment Proposal submitted by a Qualified Bidder will be considered a "**Qualified Investment Bid**" only if the Investment Proposal complies with all of the following:
- (a) it includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment, and details regarding the proposed equity and/or debt structure of the Company, if applicable, following completion of the proposed transaction (a "**Definitive Investment Agreement**");
  - (b) it includes a description of the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors, and shareholders of the Company;
  - (c) it does not include a request or entitlement to a break-up fee, expense reimbursement, or any other similar type of payment(s);

- (d) it is not conditional on: (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing capital, and includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its Investment Proposal;
  - (e) it fully discloses the identity of each entity that is bidding, or that is sponsoring or participating in the Investment Proposal, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
  - (f) it provides for the closing of the Qualified Investment Bid by no later than the Closing Date Deadline, or such later date or time as the Sales Advisor in consultation with the Monitor in accordance with the SISP Procedures, may determine appropriate;
  - (g) if the Qualified Bidder is an entity newly formed for the purpose of the transaction, the Investment Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, and satisfactory to the Sales Advisor, that names the Company as a third-party beneficiary of any such commitment letter with recourse by the Company and the Monitor against such parent entity or sponsor;
  - (h) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance, and any anticipated impediments for obtaining such approvals; and
  - (i) it contains other information reasonably requested by the Sales Advisor or the Monitor.
43. For greater certainty, Sale Proposals and Investment Proposals may be in respect of only a part or parts of the Business or Property, and such proposal(s) shall constitute a **"Qualified Portion Bid"** if it satisfies the requirements in paragraphs 40 and 41 or 42 herein as applicable, in respect of the Business or Property subject to such proposal, and in such case, such Bidder shall constitute a **"Qualified Portion Bidder."** Each Qualified Portion Bid shall be deemed to be a Phase II Bid, and each Qualified Portion Bidder shall be deemed to be a Qualified Bidder, for all purposes of the SISP.
44. Qualified Purchase Bids and Qualified Investment Bids shall hereinafter together be referred to as **"Phase II Bids"** and each a **"Phase II Bid"** and each Bidder who has submitted a Phase II Bid shall hereinafter be referred to as an **"Authorized Bidder."**
45. The Monitor may, in consultation with the Sales Advisor, if it deems appropriate or desirable in the circumstances, modify or amend the Phase II Bid Criteria.
46. The Monitor, in consultation with the Sales Advisor, may make any modification to the SISP it considers appropriate in the circumstances and, where it considers such modification to be material, it may seek Court approval of such modification on notice to the Service List in the CCAA Proceeding. The extension of any date in the SISP by up to two (2) weeks and in accordance with the terms herein shall not be considered material.

## Selection of Successful Bidders

47. Following the Phase II Deadline, the Sales Advisor will determine if each Phase II Bid delivered meets the Phase II Bid Criteria, including the Sale Proposal Bid Criteria and Investment Proposal Bid Criteria (defined below), provided that each Phase II Bid may be negotiated among the Sales Advisor, in consultation with the Monitor and the applicable bidder and may be amended, modified, or varied to improve such Phase II Bid as a result of such negotiations. The Monitor shall be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.
48. If a Phase II Bid meets the Phase II Bid Criteria, as determined by the Monitor, such Phase II Bid will be deemed to be a "**Qualified Phase II Bid**," and the Bidder in respect of each such Qualified Phase II Bid shall be a "**Qualified Phase II Bidder**" in respect of the SISP.
49. The Monitor and the Sales Advisor, in consultation with the Company, the DIP Lender and BDC, to the extent any Bid affects the Real Property (which shall include providing a summary of the terms of each Qualified Phase II Bid to the DIP Lender and the terms of any such Bids in respect of the Real Property, to BDC) will review and assess the Phase II Bids in respect of a Sale Proposal, and in making such assessment will consider, among other things, the following criteria (the "**Sale Proposal Bid Criteria**"):
  - (a) the Purchase Price and net value (including all assumed liabilities and other obligations to be performed by the Authorized Bidder) provided by such Phase II Bid and the proposed allocation of the Purchase Price among the applicable Property;
  - (b) the firm, irrevocable commitment for financing the transaction, or other evidence of ability to consummate the Sale Proposal;
  - (c) the claims, if any, likely to be created against the Company by the transaction contemplated by the Sale Proposal, relative to alternatives available to the Company;
  - (d) the estimated number of employees of the Company that will be offered post-closing employment and the material terms and conditions of same.
  - (e) the nature and amount of debt and other liabilities to be assumed or acquired by the Authorized Bidder;
  - (f) the proposed revisions to the Template APA and the terms of the proposed sale transaction documents;
  - (g) the Property included in or excluded from the Sale Proposal, and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all or substantially all of the Property;
  - (h) any transition services required from the Company post-closing, and any related restructuring costs;
  - (i) the planned treatment of stakeholders; and
  - (j) other factors affecting the speed, certainty, and value of the Sale Proposal (including any regulatory approvals and other conditions required to close the

Sale Proposal by the applicable Target Closing Date), including the likelihood of closing the Sale Proposal on or before the applicable Target Closing Date.

50. The Sales Advisor and the Monitor, in consultation with the Company, the DIP Lender and BDC, to the extent any Phase II Bid affects the Real Property, will review and assess the Phase II Bids in respect of an Investment Proposal, and in making such assessment will consider, among other things, the following criteria (the "**Investment Proposal Bid Criteria**"):
- (a) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors, and shareholders of the Company, and the planned treatment of such persons under the proposed Investment Proposal;
  - (b) the firm, irrevocable commitment for financing the investment, or other evidence of ability to consummate the Investment Proposal;
  - (c) the cost, risks, and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of a Plan, if needed;
  - (d) the estimated number of employees of the Company that will be offered post-closing employment by the Bidder, and any proposed measures associated with their continued employment;
  - (e) the transition services required from the Company post-closing, and any related tasks;
  - (f) the planned treatment of stakeholders;
  - (g) the proposed value allocated to any Real Property as against the appraised value of such Real Property; and
  - (h) other factors affecting the speed, certainty, and value of the Investment Proposal (including any regulatory approval and other conditions required to close the Investment Proposal by the applicable Target Closing Date), including the likelihood of closing the Investment Proposal on or before the applicable Target Closing Date.
51. For greater certainty, the Monitor and the Sales Advisor, shall be entitled, either prior to or following the Bid Deadline, to seek to clarify the terms of a Phase II Bid, and the Monitor may accept a revised and/or clarified Phase II Bid, provided that the initial Phase II Bid was received prior to the Bid Deadline.
52. The Monitor may waive compliance with any one or more of the requirements specified in paragraph 49 or 50, as applicable, and deem any non-compliant Bid to be a Phase II Bid.
53. The Sales Advisor in consultation with the Monitor shall apply the Sale Proposal Bid Criteria and Investment Proposal Bid Criteria, as applicable, and consider each Phase II Bid upon its submission for determination. Such determination will be made as promptly as practicable after the Bid Deadline.
54. If the Monitor in consultation with the Sales Advisor determines that any Phase II Bid was received that is in the best interests of the Company's stakeholders (or any combination of non-overlapping Qualified Portion Bids was received that is in the best interests of the

Company's stakeholders), the Monitor in consultation with the DIP Lender and BDC, to the extent any Real Property is affected, may choose to accept such Phase II Bid (in which case, such Phase II Bid shall be a "**Successful Bid**" and the Authorized Bidder making the Successful Bid shall be a "**Successful Bidder**") and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder. For greater certainty, the Monitor, may accept a combination of non-overlapping Qualified Portion Bids (collectively, an "**Aggregated Bid**") to create one Successful Bid, and in such case, the applicable Authorized Bidders will become "**Successful Bidders**".

55. The Monitor in consultation with the Sales Advisor may at any time (including prior to or during any Auction (as defined below)), in accordance with the terms herein: (a) reject any Bid that is: (i) inadequate or insufficient; and/or (ii) not in conformity with the requirements of the CCAA, the SISP Procedures, or any orders of the Court applicable to the Company; (b) accept Phase II Bids not in conformity with the SISP Procedures that are determined to be more favourable; (c) extend the Bid Deadline in accordance with these SISP Procedures, and/or change the Auction Date (as defined herein); and/or (d) reject all Phase II Bids. For greater certainty, the Monitor shall be under no obligation to accept the highest or best offer, and the selection of the Successful Bid shall be entirely in the discretion of the Monitor, in consultation with the Sales Advisor and the DIP Lender and BDC, to the extent such Bid affects the Real Property.

#### **Auction**

56. If the Sales Advisor in consultation with the Monitor determines that more than one Phase II Bid (and/or more than one Aggregated Bid) should be considered, then the Monitor may, without being obligated to do so, conduct an auction (the "**Auction**"), to determine the highest and/or best Sale Proposal or Investment Proposal, or Aggregated Bid.
57. If an Auction is to be conducted pursuant to paragraph 1, the Auction shall commence on a date as the Monitor, may determine is appropriate (the "**Auction Date**"). The Auction shall be conducted virtually through a platform to be determined by the Monitor, or such other location as the Monitor may determine.
58. If there is an Auction, the Sales Advisor in consultation with the Monitor shall develop the Auction procedures. Notice of the platform or place, date, and time of the Auction will be delivered to all Authorized Bidders by the Monitor not less than three (3) Business Days before the Auction Date.

#### **Backup Bid**

59. In the event a Successful Bid is accepted in accordance with paragraph 54, or further to an Auction in accordance with paragraph 58, the Sales Advisor in consultation with the Monitor may also select any Phase II Bid or Aggregated Bid, as the case may be, as the "**Backup Bid**" (the Bidder of such Backup Bid, the "**Backup Bidder**") and take such steps as are necessary to finalize and complete an agreement for the Backup Bid with the Backup Bidder. In the event the closing of the Successful Bid accepted in accordance with paragraphs 54 or 58, as the case may be, does not occur, the Backup Bid shall, upon confirmation of the Monitor, become the Successful Bid and be dealt with as such in accordance with the SISP Procedures.

## Approval Motion

60. After a definitive agreement(s) in respect of a Successful Bid has been finalized in accordance with the SISP Procedures, if such Successful Bid relates to the Business or Property, the Company shall apply to the Court as soon as reasonably practicable for an order approving such Successful Bid and authorizing the Company to enter into any and all necessary agreements with respect to such Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to such Successful Bid, including for the approval of any Plan(s) pursuant to the CCAA or Arrangement pursuant to the CBCA, as applicable (an "**Approval Motion**").
61. An Approval Motion will be held on a date to be scheduled by the Court and to be heard as soon as possible. With the consent of the Monitor and the Successful Bidder(s), and in consultation with the DIP Lender, the Approval Motion may be adjourned or rescheduled by the Company without further notice, by an announcement of the adjourned date at the Approval Motion or with notice to the service list of the CCAA proceedings prior to the Approval Motion. The Companies will consult with the Monitor, the DIP Lender, and the Successful Bidder(s) regarding the motion material to be filed by the Companies for the Approval Motion.
62. All Phase II Bids (other than the Successful Bid and the Backup Bid, as the case may be) will be deemed rejected at 11:59 p.m. (Toronto Time) on the Business Day after the acceptance of the Successful Bid relating to the same Business and/or Property.
63. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute, or as otherwise required at law in order to implement a Successful Bid.

## Confidentiality and Access to Information

64. Each Interested Party, Qualified Phase I Bidder, and Qualified Phase II Bidder shall not be permitted to receive any confidential or competitive information that is not made generally available to all participants in the SISP, relating to the number or identity of Bidder(s), the details of any bids or Phase I/Phase II Bids submitted, or the details or existence of any confidential discussions or correspondence among the Company, the Monitor, and any Bidder in connection with the SISP.

## Supervision of the SISP

65. Subject to any consultation rights and other similar rights provided for herein, the Monitor and the Sales Advisor will conduct the SISP in the manner set out herein and in the SISP Approval Order. All discussions or inquiries to the Company regarding the SISP shall be directed to the Sales Advisor. Under no circumstances should a representative of the Company be contacted directly or indirectly in respect of the SISP, including diligence requests, without the prior written consent of the Monitor. Any such unauthorized contact or communication could result in exclusion from the SISP, in the Monitor's sole discretion.
66. The Company and its principals, employees, and professional advisors shall cooperate fully with the Sales Advisor and the Monitor and provide documents and information requested as part of the SISP to the Sales Advisor in a prompt fashion.
67. Other than as specifically set forth in a definitive agreement between the Company and a Successful Bidder, the SISP does not, and will not be interpreted to, create any contractual

or other legal relationship among the Company, the Monitor, any Interested Party, Qualified Phase I Bidder, Qualified Phase II Bidder, the Successful Bidder, or any other party.

### **Further Orders**

68. At any time during the SISP, the Company or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP, including, but not limited to, the continuation of or termination of the SISP or with respect to the discharge of its powers and duties hereunder.

### **Additional Terms**

69. In addition to any other requirement of the SISP, prior to seeking Court approval for any transaction or Bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP, parts of which may be filed under seal, including in respect of any and all Bids received.
70. The Monitor may, with the consent of the DIP Lender, terminate the SISP in relation to all or any part of the Business or Property, including if no acceptable bids are received by any deadline contemplated herein.
71. Neither the Company nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee, or like payment in respect of the consummation of any of the transactions consummated under the SISP. Any such claim shall be the sole liability of the Bidder that consummates a transaction under the SISP pursuant to which the claim is being made.
72. Notwithstanding anything to the contrary herein, neither the Monitor, the Sales Advisor, nor the Company shall have any liability whatsoever to any person or entity, including, without limitation, any Interested Party, Qualified Phase I Bidder, Qualified Phase II Bidder, or the Successful Bidder, as a result of implementation or otherwise in connection with this SISP, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Monitor, as determined by the Court, and all such persons or entities shall have no claim against the Monitor in respect of the SISP for any reason whatsoever.

## Schedule "B"

### Contact Information

#### Sales Advisor

#### **PricewaterhouseCoopers Corporate Finance Inc. ("PwC CF")**

PwC Tower  
18 York Street, Suite 2600  
Toronto, ON M5J 0B2  
Canada

#### **Attn:**

- **Eric Castonguay**, Managing Director  
Phone: (416) 722-3418  
Email: eric.castonguay@pwc.com
- **Bryan Allsopp**, Managing Director  
Phone: (613) 851-0550  
Email: bryan.n.allsopp@pwc.com
- **Pierre-Yves Morisset**, Managing Director  
Phone: (604) 332-7379

#### Monitor

#### **BDO Canada Limited ("BDO")**

20 Wellington St. East Suite 500  
Toronto, ON M5E 1C5  
Canada

#### **Attn:**

- **Heron Yin**, Senior Associate  
Phone: (647) 798-9849  
Email: hyin@bdo.ca

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED ET AL.**

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

Proceedings commenced at Toronto

**SISP APPROVAL ORDER**

**RECONSTRUCT LLP**  
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**Lawyers for the Applicants**

THIS IS **EXHIBIT "E"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



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A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W

Court File No. CV-25-00741419-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED**

Applicants

**AFFIDAVIT OF EUGENE WOODBRIDGE**

(Sworn May 23, 2025)

I, **EUGENE WOODBRIDGE**, of the City of Oakville, in the province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Chief Executive Officer of Earth Boring Co. Limited ("**EBCL**"). I have been in this role since 2005, and previously served as Vice President of EBCL beginning in 1998. I am also the President of Yarbridge Holdings Inc. ("**Yarbridge**"), and the Vice President of Yarfield Services Limited ("**Yarfield**") and Trolan Investments Ltd. ("**Trolan**", together with EBCL, Yarbridge, and Yarfield, the "**Applicants**"). I am also a director of each of the Applicants. Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I have stated the source of such information and verily believe it to be true.

2. All references to currency in this affidavit are references to Canadian dollars unless otherwise indicated.

3. This affidavit is sworn in support of the Applicants' motion for:
- (a) an order (the "**SISP Approval Order**") that, among other things:
- i. approves the sale and investment solicitation process attached as Schedule "A" to the SISP Approval Order (the "**SISP**");
  - ii. approves the appointment of PricewaterhouseCoopers Corporate Finance Inc. as Sales Advisor (in such capacity, the "**Sales Advisor**") to assist BDO Canada Limited in its capacity as Monitor of the Applicants (in such capacity, the "**Monitor**") and the Applicants in the implementation of the SISP;
  - iii. grants the Sales Advisor a charge (the "**Sales Advisor Charge**"), in the maximum amount of \$350,000, as security for the amounts owed to the Sales Advisor pursuant to the terms of the Sales Advisor Engagement (defined below);
  - iv. authorizes the Sales Advisor, the Monitor, and the Applicants to take any and all actions as may be necessary or desirable to implement and carry out the SISP;
  - v. approves the Pre-Filing Report of the Monitor dated April 16, 2025, the First Report of the Monitor dated April 23, 2025, and the Second Report of the Monitor, to be filed (the "**Second Report**"), and the activities of the Monitor set out therein; and
  - vi. approves the fees and disbursements of the Monitor and its counsel, as set out in the Second Report; and

- (b) a Third Amended and Restated Initial Order (the “**TARIO**”) that, among other things:
- i. extends the stay of proceedings (the “**Stay Period**”) up to and including August 15, 2025; and
  - ii. amends the Administration Charge to include the CRO (as defined below) and the Sales Advisor as persons benefiting from such charge, and increases the amount of the Administration Charge from \$600,000 to \$750,000 to include the monthly work fee of the Sales Advisor.

## I. BACKGROUND OF THE CCAA PROCEEDING

4. The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the “**Business**”).

5. EBCL primarily works for municipalities, but also works with a diverse range of other customers in the construction industry, providing critical gas and electrical pipelines, and water and waste management infrastructure.

6. EBCL experienced significant financial and operational challenges in the past year that resulted in an acute liquidity crisis. The financial challenges were associated with, among other things: (i) a rapid expansion of the Business that significantly increased the upfront capital required for operations; (ii) changes to the eligibility requirements of Ontario’s Housing-Enabling Water Systems Fund, which delayed a majority of the Applicants’ 2024 projects; (iii) unprecedented issues with one of the Applicants’ infrastructure projects located in Caledon, Ontario; (iv) the shouldering of the upfront costs of certain insurance claims; and (v) the significant impact of tariffs on the construction industry generally.

7. As a result, on April 17, 2025, the Applicants sought and obtained an order (as amended, restated, or otherwise modified from time to time, the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Initial Order is attached as **Exhibit “A.”**

8. The Initial Order, among other things:

- (a) appointed BDO Canada Limited as Monitor of the Applicants;
- (b) approved the engagement of Steinberg Advisory Corp., as Chief Restructuring Officer of the Applicants (the “**CRO**”);
- (c) granted a stay of all proceedings and remedies taken, or that might be taken, in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”) to July 4, 2025;
- (d) granted a third party stay of proceedings, in favour of a related entity of the Applicants, Pennbridge Holdings Inc.;
- (e) approved an interim financing loan agreement (the “**DIP Term Sheet**”) between the Applicants and the Bank of Montreal (the “**DIP Lender**”) pursuant to which the DIP Lender agreed to advance to the Applicants the principal amount of \$5.5 million;
- (f) granted the following charges, with the priority amongst them as set out below, which charges shall rank in priority to all other security interests, trusts, liens, charges, and encumbrances in favour of any person:
  - i. First – an “**Administration Charge**” against all present and future assets, undertakings, and properties of every nature and kind whatsoever, and

wherever situate, of the Applicants, including all proceeds thereof (the "**Property**"), in the amount of 600,000, as security for the payment of professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, the monthly fees of the CRO, and counsel to the Applicants;

- ii. Second – a "**DIP Lender's Charge**" against the Property of the Applicants as security for the Applicants' obligations under the DIP Term Sheet, in the maximum principal amount of \$5 million, plus fees and interest, subject only to the mortgage security granted to the Business Development Bank of Canada ("**BDC**") by Trolan and Yarbridge with respect to the Burlington Property and the Brampton Property (each as defined in the Initial Order); and
  - iii. Third – a charge against the Property ("**Director's Charge**") as security for the obligation of the Applicants to indemnify its directors and officers from the obligations and liabilities that they may incur as directors and officers after the commencement of the within proceeding, except for gross negligence or wilful misconduct, in the maximum principal amount of \$400,000. With respect to real property owned by each of Trolan and Yarbridge, the Director's Charge ranks ahead of the interests of the Business Development Bank of Canada and the DIP Lender's Charge in the maximum amount of \$100,000 on each Property.
- (g) stayed any person with recourse to a Performance Bond (as defined in my Initial Affidavit (as defined below)), including any person named as an owner or obligee under such bond, from enforcing or calling on the Performance Bond, except with the written consent of the Applicants and the Monitor.

9. In addition to granting the Initial Order, the Court also granted a Lien Regularization Order (the “**LRO**”). A copy of the LRO is attached as **Exhibit “B.”** The LRO, among other things:

- (a) stayed the rights of any person who supplied services and/or materials to the Applicants solely with respect to certain construction projects to which the Applicants are a contracting party, and which are listed in Schedule “A” to the LRO (the “**Continuing EBCL Projects**”), to preserve, maintain, perfect, or register liens (each, a “**Lien Claim**” and such person asserting a Lien Claim, a “**Lien Claimant**”), including by way of a notice of lien pursuant to and in accordance with the *Construction Act* R.S.O. 1990, c. C.30 (the “**Construction Act**”), other than as permitted by the LRO;
- (b) granted a charge over the Applicants’ property in the applicable Continuing EBCL Project in favour of a Lien Claimant equivalent to, and only to the extent of, any security that, but for this proceeding, would otherwise be available under the *Construction Act*, as set out in and pursuant to the procedural requirements of the LRO (the “**Lien Charge**”); and
- (c) declared that the priority of the Lien Charge: (i) shall rank subordinate to the Directors’ Charge; (ii) relative to the other Lien Charges, shall be equivalent to the priority granted under the *Construction Act*; and (iii) with respect to other creditors of the Applicants, shall, subject to any orders granted in these proceedings, have priority in accordance with the Federal laws of Canada and the Province of Ontario.

10. In support of the Initial Order and LRO, I swore an affidavit dated April 16, 2025 (the “**Initial Affidavit**”), which details, among other things, the Applicants’ business and financial circumstances, the events leading up to and resulting in the Applicants’ insolvency, and the

Applicants' need for relief under the CCAA to conduct an operational and financial restructuring. A copy of the Initial Affidavit (without exhibits) is attached as **Exhibit "C"**.

11. On April 23, 2025, I swore an affidavit that provides details on the Applicants' activities between the granting of the Initial Order and the comeback hearing (the "**Second Affidavit**"). My Second Affidavit (without exhibits) is attached as **Exhibit "D."**

12. The Applicants bring this motion to conduct and implement the SISP. The Applicants' requested relief is essential to the Applicants' restructuring efforts. Specifically, the SISP will complement the Applicants' ongoing operational restructuring by canvassing the market for a transaction that will maximize value for stakeholders.

## **II. OVERVIEW OF THE APPLICANTS' ACTIVITIES SINCE THE ARIO**

13. Since the granting of the Amended and Restated Initial Order ("**ARIO**"), the Applicants, in close consultation with, and with the assistance of, the Monitor and CRO, have acted in good faith and with due diligence to stabilize and streamline the Business by, among other things:

- (a) continuing operations in the normal course on the Continuing EBCL Projects;
- (b) corresponding with suppliers to advise them of the CCAA proceeding and, where applicable, advising of the LRO and claims process set out therein;
- (c) corresponding with project owners and general contractors to advise them of the CCAA proceeding;
- (d) corresponding and negotiating with project owners and general contractors regarding unpaid accounts receivable;

- (e) working with Aviva Insurance Company of Canada (“**Aviva**”), the Applicants’ construction surety, with respect to projects that are bonded and subject to subcontractor claims;
- (f) assessing profitable versus unprofitable projects and contracts;
- (g) disclaiming an unprofitable contract for the project known as “**Dain City Watermain**”;
- (h) developing the SISP;
- (i) engaging a Sales Advisor to assist with the SISP;
- (j) making certain personnel changes, including hiring a new Chief Financial Officer;
- (k) negotiating an extension of the maturity date of the DIP Term Sheet to August 15, 2025 to correspond to the timelines of the SISP; and
- (l) negotiating terms with Aviva with respect to completing work on the (“**Caledon Project**”) (as defined below).

#### **A. Stakeholder Communications**

14. As detailed in my Second Affidavit, shortly after the granting of the Initial Order, the Applicants initiated targeted communications to industry stakeholders, specifically construction project owners and suppliers, explaining the nature of the Initial Order and the CCAA proceedings, as well as the implications of the Initial Order on each particular stakeholder group. The Applicants also advised individual stakeholders, as appropriate, of the LRO and the process for lien claims set out therein.

15. Since the Initial Order, the Applicants and their advisors have continued to expend significant time and resources communicating with stakeholders. More specifically, on a near daily basis, the Applicants, the Monitor, and the CRO have been responding to inquiries from stakeholders regarding specific projects and how each stakeholder is impacted by the Initial Order and LRO (as applicable).

16. In recent weeks, the Applicants, with the assistance of the Monitor and the CRO, have also reached out to numerous customers to collect unpaid accounts receivable and to advise customers that they are required to continue to make payments to the Applicants during the pendency of the CCAA proceedings.

17. To date, the combined efforts of the Applicants, the Monitor, and the CRO have been largely successful in ensuring that payments are made to EBCL in the normal course, and that EBCL is able to continue operating largely uninterrupted.

## **B. Evaluation of Construction Projects**

18. As indicated in the Initial Affidavit, EBCL intended to disclaim certain construction project contracts which were unprofitable (the “**Discontinued EBCL Contracts**”) on the basis that the cost to complete each of the projects exceeded the remaining balance payable on the contracts.

19. The Applicants’ evaluation of the profitability of their contracts, and which contracts they wish to disclaim, remains ongoing. To date, EBCL, with the consent of the Monitor, has disclaimed one contract, which is the contract with respect to the Dain City Watermain project.

20. The survival of the Applicants hinges both on the financial health of the Business and on maintaining relationships with stakeholders in this specialized area of construction. The Applicants and their advisors have worked hard to balance these two, often competing, objectives

in order to effect a successful operational and financial restructuring and going-concern of the Applicants.

### **C. Lien Claims**

21. Since the granting of the ARIO, the Applicants have been made aware of numerous lien claims on construction projects. The majority of lien claims the Applicants are aware of are with respect to 2021-492T for the Proposed Sanitary Sewers and Forcemain along Various Streets and Bolton Sewage Pumping Station Modifications, Town of Caledon, Projects 12-2210, 17-2280, 17-2192, and 18-2286 (the “**Caledon Project**”) owned by the Regional Municipality of Peel (“**Peel**”). The Caledon Project was not a EBCL Continuing Project and is not subject to the LRO.

22. In respect to the Exhibition GO Station project with Aecon Construction and Materials Ltd. (the “**Aecon Project**”), the Applicants received the holdback in respect to the Aecon Project. The Applicants are currently working with the Monitor to confirm that all payments have been made to subtrades and suppliers on the project. Once the Monitor is satisfied that all payments have been made on the Aecon Project, the holdback funds from the project will be used by the Applicants in the usual course to fund the business in these proceedings.

### **D. Discussions with Aviva**

23. The Applicants, the Monitor, and their respective counsel have been actively engaged in discussions with Aviva and its counsel regarding the proposed Discontinued EBCL Contracts and Continuing EBCL Projects that are bonded by Aviva. These discussions remain ongoing.

24. As part of these discussions, the Applicants, Aviva, and Peel have been engaged in negotiations regarding the completion of the Caledon Project, which in the absence of an agreement to fund the further work required, would be a proposed Discontinued EBCL Contract. In particular, on or about May 8, 2025, Peel sent a Notice of Termination terminating the Caledon

Project. Following receipt of the Notice of Termination, negotiations between the parties have continued. The Applicants believe that an executed agreement satisfactory to the parties is close which will see EBCL completing the Caledon Project in the near term.

25. The Applicants have also been providing information to Aviva on bonded projects where a claim for lien has been made. The Applicants will continue to work with Aviva on an ongoing basis in regards to these lien claims.

#### **E. Engagement of Sales Advisor**

26. The Applicants seek to engage the Sales Advisor to administer the SISP in consultation with the Monitor. The Applicants seek the assistance of a Sales Advisor in order to maximize value for the Business for the benefit of all stakeholders. PricewaterhouseCoopers Corporate Finance Inc. has agreed to assist with this mandate, and an engagement letter has been executed by the parties (the "**Sales Advisor Engagement**"). A copy of the Sales Advisor Engagement is attached as **Exhibit "E."**

27. Pursuant to the Sales Advisor Engagement, the Sales Advisor will assist the Applicants and the Monitor with the implementation of the SISP. Specifically, the Sales Advisor will, among other things, assist with developing due diligence documentation, facilitate due diligence information flow, advise on strategy and tactics in negotiations, and advise on the selection of the Successful Bid (defined below).

28. As consideration for the Sales Advisor's services, the Sales Advisor is to receive:

- (a) a \$50,000 monthly fee (the "**Work Fee**"); to be credited against any Success Fee (as defined below);
- (b) a "**Success Fee**," to be calculated as follows:

- i. if there is an asset or equity sale, the Success Fee will be based on a percentage of the Total Enterprise Value (“TEV”) calculated as follows:
    1. for the portion of the purchase price below \$20 million – \$500,000;
    2. for the portion of the purchase price between \$20 to \$30 million – \$2.5% of TEV
    3. for the portion of the purchase price above \$30 million – 4% of TEV
  - ii. if there is a debt refinancing, the Success Fee will be based on a percentage of the capital raised or committed, calculated as follows:
    1. senior debt = 1% of capital raised
    2. private debt=3% of capital raised
    3. junior capital or subordinated debt=4% of capital raised
29. As security for the fees of the Sales Advisor, the Applicants seek to:
- (a) increase the Administration Charge by \$150,000 to cover three months of the Work Fee; and
  - (b) grant a Sales Advisor Charge over the Property of the Applicants in the maximum amount of \$350,000, which charge will be subordinate to the other charges in the Initial Order and to the BDC mortgage security.
30. The Applicants believe that the Sales Advisor Charge and the addition of the Sales Advisor to the Administration Charge are reasonable, given the critical role that the Sales Advisor will take in the SISF, which will assist in maximizing value for all stakeholders.

### III. THE SISP

31. As detailed in the Initial Affidavit, prior to commencing the CCAA proceedings, the Applicants retained a financial advisor to conduct a sale and investment solicitation process (the “**Sale Process**”) to canvass the market for possible refinancing or sale opportunities.

32. The Sale Process commenced in and around December 2024. The sale efforts involved creating a confidential information memorandum, which was circulated to 146 potential investors, including 126 financial sponsors and 20 strategic partners.

33. The Sale Process generated significant interest in the Applicants’ Business from a range of strategic and financial parties. In particular, the Applicants received 94 executed non-disclosure agreements from interested parties. The parties who executed a non-disclosure agreement were granted access to a comprehensive virtual data room to conduct due diligence on the investment opportunity.

34. The Sale Process had a deadline of January 23, 2025, for parties to submit an expression of interest detailing, among other things, the anticipated purchase price, the proposed structure, sources of financing, and closing conditions. By the January deadline, one party submitted a verbal expression of interest for a purchase of the Business. However, other parties remained interested in a possible sale or refinancing transactions, but required further time to complete due diligence.

35. Unfortunately, in the midst of the Sale Process and due diligence by the interested parties, the Applicants’ cash flow continued to decrease such that the protection of the CCAA became necessary. As a result, a primary objective of these CCAA proceedings is to continue the Sale Process in order to complement the Applicants’ ongoing operational restructuring. As a result, the Applicants developed the SISP, in consultation with the Monitor, the CRO, and the DIP Lender.

## A. Overview of the SISP

36. The SISP contemplates a two-phase sale and investment solicitation process that will be administered by the Sales Advisor, in consultation with the Monitor. The timeline of the SISP is approximately seven weeks and anticipates closing a transaction by or before August 11, 2025. The deadlines in the SISP may be extended by the Monitor with the consent of the DIP Lender by up to two weeks in the event that additional time is needed to identify and close a transaction.

37. Bidders will have the opportunity to submit a bid in the form of either a purchase of the Applicants' Property (a "**Sale Proposal**") or an investment in the Applicants (an "**Investment Proposal**"). Although all of the Applicants' Property is being offered for sale or investment, a Sale Proposal and Investment Proposal may be in respect of only some of the Property, and any such proposal will not be precluded from consideration as an acceptable bid.

38. Any shareholder or director of the Applicants (each an "**Insider**") may, subject in all respects to such Insider's compliance with the Bidding Procedures, make a bid in the SISP, provided such intention to bid must be communicated to the Monitor in writing by no later than June 19, 2025 (one day before the non-binding agreements are due). In the event that an Insider submits a bid in the SISP, the Sales Advisor and the Monitor shall not share any information with the Insider with respect to the SISP, and shall not be required to consult with the Company.

39. During Phase I of the SISP ("**Phase I**"), the Sales Advisor, in consultation with the Monitor, will solicit non-binding letters of intent ("**LOIs**") from Interested Parties (defined below) to acquire or refinance the Business and/or Property of the Applicants. After receiving the LOIs, the Sales Advisor, in consultation with the Monitor, will assess the LOIs to determine which bids are a "**Qualified Phase I Bids**" and which bidders can participate in Phase II of the SISP ("**Phase II**").

40. Phase II of the SISP calls for either a “**Qualified Purchase Bid**” or “**Qualified Investment Bid**,” both of which constitute a “**Phase II Bid**”. If a Phase II Bid meets the Phase II Bid Criteria (defined below), as determined by the Sales Advisor, in consultation with the Monitor, such Phase II Bid will be deemed to be a “**Qualified Phase II Bid**”.

41. Following the Phase II Bid deadline, the Monitor, in consultation with the Sales Advisor and the DIP Lender, may choose to accept the bid that is in the best interests of the Applicants’ stakeholders (the “**Successful Bid**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Bid.

42. The SISP contemplates the following key milestones and deadlines:

| <b>Milestone</b>   | <b>Deadline</b>   |
|--|---|
| Commence solicitation of interest from parties                 | As soon as practicable following the date of the SISP Approval Order. |
| Phase I Bid Deadline for LOIs                                  | June 20, 2025   |
| Phase II: Commencement of Due Diligence for Selected Bidders   | June 23, 2025   |
| Deadline for Binding Offers (“ <b>Phase II Bid Deadline</b> ”) | July 18, 2025   |
| Selection of Successful Bid (assuming no Auction)              | July 21, 2025   |
| Definitive Transaction Document                                | July 25, 2025   |
| Approval Motion  | Subject to availability of the Court                                  |
| “ <b>Target Closing Date</b> ” Deadline                        | August 11, 2025   |

43. I believe the above milestones, while condensed, provide sufficient time for the Sales Advisor to broadly canvass the market for a value-maximizing transaction in light of the prior Sale Process efforts of the Applicants. In particular, the above timeline of the SISP appropriately

balances the Applicants' need to permit the Sales Advisor to comprehensively market the Business with the fact that the quicker closing of a transaction is likely to achieve more value in light of the Applicants' ongoing and upcoming projects, and concerns related to customer and employee retention.

**B. Solicitation of Interest and Notice of the SISP**

44. The SISP prescribes that the Sales Advisor, with the assistance of the Applicants and the Monitor, and in consultation with the DIP Lender, has prepared:

- (a) a list of potential buyers ("**Interested Parties**");
- (b) an initial offering summary ("**Teaser Letter**");
- (c) a form of non-disclosure agreement ("**NDA**");
- (d) a confidential information memorandum describing the opportunity; and
- (e) a virtual data room.

45. I understand that the Sales Advisor has already started preparing the above-noted documents with a view to commencing the SISP as soon as reasonably practicable following the SISP Approval Order.

46. The Sales Advisor will be sending out the Teaser Letter and NDA to each known potential bidder and to any other party who requests a copy. Any Interested Party who wishes to participate in the SISP must provide an executed NDA and, if the Monitor considers it necessary, financial disclosure that allows the Monitor to make a reasonable determination as to the Interested Party's financial and other capabilities to consummate a potential transaction.

### C. Phase I of the SISP – Non-Binding LOIs

47. Following the solicitation of interest in the Business, the Sales Advisor in consultation with the Monitor, the DIP Lender and the Company will review any and all LOI's received. An LOI will be considered a Qualified Phase I Bid where it complies with certain minimum criteria, including that it contains, among other things:

- (a) the purchase price in Canadian dollars, including details of all Property to be purchased and liabilities to be assumed by the bidder;
- (b) any anticipated approvals and consents required to close the transaction, and any anticipated impediments to such approvals or consents;
- (c) specific due diligence required to be conducted during Phase II, if any; and
- (d) all conditions to closing sought by the bidder;

48. In addition to the requirements set out above, a Qualified Phase I Bid in respect of a Sale Proposal must include:

- (a) a detailed listing and description of the Property to be included in the Sale Proposal and a detailed listing of the Property to be excluded from the Sale Proposal;
- (b) the low and high range of the proposed purchase price for such Sale Proposal, the proposed allocation of purchase price among the applicable Property, and an explanation of what contingencies and variables may influence the range in which the final purchase price will fall (each as defined herein);
- (c) whether the proposed transaction is to be implemented by way of a "**Approval and Vesting Order**" or a "**Reverse Vesting Order**"; and

- (d) a description of any liabilities to be assumed by the Prospective Bidder and the Prospective Bidder's estimated value of such assumed liabilities.

49. In addition to the requirements set out above, a Qualified Phase I Bid in respect of an Investment Proposal must include:

- (a) a description of the structure of the Investment Proposal;
- (b) a description of the type and amount of consideration to be allocated to secured creditors, unsecured creditors, and shareholders of the Applicants; and
- (c) a description of any liabilities to be assumed by the Prospective Bidder's estimated value of such assumed liabilities.

50. If the Sales Advisor in consultation with the Monitor determines that one or more Qualified Phase I Bids are received, then the SISP shall proceed to Phase II.

#### **D. Phase II of the SISP – Binding Offers**

51. Bidders will have the opportunity to submit a Qualified Phase II Bid in the form of either a Qualified Purchase Bid or a Qualified Investment Bid.

52. In order to be considered a Qualified Phase II Bid, the binding offer must meet, *inter alia*, the following criteria (collectively, the "**Phase II Bid Criteria**"):

- (a) be binding and irrevocable until the earlier of: (i) thirty (30) days after the Phase II Bid Deadline, and (ii) approval by the Court of the Successful Bid;
- (b) include a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor, or such other form of deposit as is acceptable to the

Monitor), payable to the Monitor, in trust, in an amount equal to 10% of the purchase price contemplated by the Phase II Bid;

- (c) for Sale Proposals, include the proposed revisions to the Template APA and the terms of the proposed sale transaction documents;
- (d) include written evidence of a firm, irrevocable commitment for financing, or other evidence of an ability to consummate the proposed transaction or transactions comprising the Phase II Bid, that will allow the Sales Advisor/Monitor to make a determination as to the bidder's financial and other capabilities to consummate the proposed transaction;
- (e) include a description of any desired arrangements with respect to transition services that may be required from the Applicants;
- (f) be received by the Phase II Bid Deadline; and
- (g) contemplate closing the transaction set out therein on or before August 11, 2025.

53. In addition to the Phase II Bid Criteria, bids must also meet specific criteria for a Qualified Purchase Bid and Qualified Investment Bid to be considered a Qualified Phase II Bid. The additional criteria required for Qualified Purchase Bids is set out at paragraph 35 of the SISP. The additional criteria required for Qualified Investment Bids is set out at paragraph 36 of the SISP.

#### **E. Selection, Approval and Closing of the Successful Bid(s)**

54. Following receipt of the Phase II Bids, the Sales Advisor and the Monitor, in consultation with the DIP Lender, will review and assess the bids to determine the Successful Bid.

55. In assessing a Sale Proposal, the Sales Advisor and Monitor will consider, among other things, the following criteria:

- (a) the purchase price and net value (including all assumed liabilities and other obligations to be performed by the bidder) provided by such Phase II Bid, and the proposed allocation of the purchase price among the applicable Property;
- (b) the firm, irrevocable commitment for financing the transaction, or other evidence of ability to consummate the Sale Proposal;
- (c) the nature and amount of debt and other liabilities to be assumed or acquired by the bidder;
- (d) the proposed revisions to the Template APA (as set out in the SISF) and the terms of the proposed sale transaction documents;
- (e) the estimated number of employees of the Applicants that will be offered post-closing employment by the bidder and any proposed measures associated with their continued employment;
- (f) the Property included in or excluded from the Sale Proposal, and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all or substantially all of the Property;
- (g) any transition services required from the Applicants post-closing, and any related restructuring costs;
- (h) other factors affecting the speed, certainty and value of the Sale Proposal (including any regulatory approvals and other conditions required to close the Sale Proposal by the applicable Target Closing Date), including the likelihood of

closing the Sale Proposal on or before the applicable Target Closing Date.

56. In assessing an Investment Proposal, the Sales Advisor and Monitor, will consider among other things, the following criteria:

- (a) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors, and shareholders of the Applicants, and the planned treatment of such persons under the proposed Investment Proposal;
- (b) the firm, irrevocable commitment for financing the investment, or other evidence of ability to consummate the Investment Proposal;
- (c) the cost, risks, and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of a Plan, if needed;
- (d) the estimated number of employees of the Applicants that will be offered post-closing employment by the bidder, and any proposed measures associated with their continued employment;
- (e) the transition services required from the Applicants post-closing; and
- (f) other factors affecting the speed, certainty, and value of the Investment Proposal (including any regulatory approval and other conditions required to close the Investment Proposal by the applicable Target Closing Date).

57. After the Sales Advisor and Monitor assess the Phase II Bids, the Monitor, in consultation with the Sales Advisor, the Company and the DIP Lender, may choose a Successful Bid and take such steps as are necessary to finalize and complete an agreement for the Successful Bid.

58. In the alternative, if the Monitor, in consultation with the Sales Advisor, determines that more than one Phase II Bid should be considered, then the Monitor may, without being obligated to do so, conduct an auction (the "**Auction**"), to determine the highest and/or best Sale Proposal or Investment Proposal. If there is an Auction, the Monitor, in consultation with the Sales Advisor, shall develop the Auction procedures.

59. After a definitive agreement in respect of a Successful Bid has been finalized in accordance with the SISP, the Applicants shall apply to the Court as soon as reasonably practicable for an order approving such Successful Bid

#### **IV. THE THIRD AMENDED AND RESTATED INITIAL ORDER**

##### **A. Extension of the Stay Period**

60. The Applicants seek to extend the Stay of Proceedings to and including August 15, 2025. The extension of the Stay of Proceedings is necessary and appropriate in the circumstances in order to allow the Applicants to implement their operational and financial restructuring and administer the SISP.

61. As set out above, the Applicants have acted, and are continuing to act, in good faith and with due diligence in these CCAA proceedings.

62. The Applicants and the CRO have worked with the Monitor to prepare an updated cash flow statement for the week ending August 15, 2025 (the "**Cash Flow Statement**"). I understand the Cash Flow Statement will be attached as an Appendix to the Second Report of the Monitor. The Cash Flow Statement demonstrates that the Applicants will have sufficient liquidity to operate through the extended Stay of Proceedings.

63. I believe that the Applicants' stakeholders will benefit from the extension of the Stay of Proceedings. I am not aware of any material prejudice to stakeholders that will result from the extension of the Stay of Proceedings.

64. I understand that the Monitor and the DIP Lender are supportive of the proposed extension of the Stay of Proceedings.

**B. Amendments to the Administration Charge**

65. The Applicants seek to make three amendments to the Administration Charge:

- (a) increase the maximum amount of the Administration Charge from \$600,000 to \$750,000 to cover three months of the Sales Advisor's Work Fee;
- (b) amend the language with respect to the Administration Charge to clarify that the CRO can benefit from the Administration Charge for its monthly fees, which was always the intention of the Applicants and the CRO, and is supported by the Monitor and DIP Lender; and
- (c) amend the language with respect to the Administration Charge to permit the Sales Advisor to also benefit from the Administration Charge in the amount equal to three months of the Work Fee.

66. The Applicants believe that the amendments to the Administration Charge are necessary for the Applicants to receive the assistance of the CRO and Sales Advisor, both of which are critical to the Applicants' ongoing restructuring initiatives.

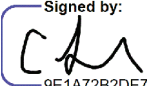
67. I understand that the Monitor and the DIP Lender are supportive of the proposed changes to the Administration Charge.

**V. CONCLUSION**

68. For the reasons set out above, I believe that it is in the interests of the Applicants and their stakeholders that this Court grant the relief requested in accordance with the terms of the proposed TARIO and SISP Approval Order.

69. I swear this affidavit in support of the Applicants' requested relief and for no other or improper purpose.

**SWORN** by **EUGENE WOODBRIDGE** )  
before me in the City of Oakville, in the )  
Province of Ontario, on this 23<sup>rd</sup> day of )  
May, 2025. )

Signed by:  
  
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\_\_\_\_\_  
A Commissioner for taking Affidavits.

Caitlin Fell

DocuSigned by:  
*Eugene Woodbridge*  
896E3B9A56B14A6...

\_\_\_\_\_  
**EUGENE WOODBRIDGE**

DocuSign Envelope ID: D36DED9A-AD7D-414F-89AB-33AD9845462E

**IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36 AS AMENDED**

Court File No. CV-25-00741419-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED ET AL.**

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

Proceedings commenced at Toronto

**AFFIDAVIT OF EUGENE WOODBRIDGE  
(Sworn May 23, 2025)**

**RECONSTRUCT LLP**

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Tel: 416.613.4881

**Lawyers for the Applicants**

THIS IS **EXHIBIT "F"** REFERRED TO IN THE  
AFFIDAVIT OF **EUGENE WOODBRIDGE** SWORN REMOTELY BY **EUGENE WOODBRIDGE**  
STATED AS BEING LOCATED IN THE CITY OF OAKVILLE BEFORE ME AT THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO THIS 3rd DAY OF SEPTEMBER 2025, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



---

A COMMISSIONER FOR TAKING AFFIDAVITS

JESSICA WUTHMANN  
LSO No. 72442W

**SHARE SUBSCRIPTION AGREEMENT**

**EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., AND TROLAN  
INVESTMENTS LTD.**

AS THE VENDORS

**-AND-**

**BARRIER RIDGE CAPITAL INC., on behalf of and in trust for a corporation to be  
incorporated**

AS PURCHASER

**THIS SHARE SUBSCRIPTION AGREEMENT** is made as of September 3, 2025

**BETWEEN:**

**EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., and TROLAN INVESTMENTS LTD.**, each a corporation existing under the laws of the Province of Ontario (collectively, the “**Vendors**” and “**Vendor**” means any one of them)

-and-

**BARRIER RIDGE CAPITAL INC.**, on behalf of and in trust for a corporation to be incorporated (the “**Purchaser**”)

**RECITALS:**

- A. The Applicants (as defined herein) are an industry leader in underground construction for complex infrastructure projects in Ontario. The Applicants are engaged in the business of trenchless construction services, which includes, among other things, microtunneling, mixed microtunneling and boring, auger boring, and directional drilling (the “**Business**”).
- B. On April 17, 2025, the Applicants sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and was granted an Initial Order by the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) (as amended on April 24, May 5, and May 28, 2025, the “**Initial Order**”). The Initial Order, among other things, appointed BDO Canada Limited as monitor of the Applicants (the “**Monitor**”) and approved an interim financing facility from Bank of Montreal (the “**DIP Lender**”).
- C. On May 28, 2025, the Court granted an order (the “**SISP Approval Order**”): (i) authorizing the Monitor, with the assistance of the Applicants, to undertake a sale and investment solicitation process (“**SISP**”) to solicit offers for a sale, recapitalization, or refinancing of the Vendors’ property, assets, and undertaking (collectively, the “**Property**”), and/or its Business; and (ii) approving the appointment of PricewaterhouseCoopers Corporate Finance Inc. as sales advisor (the “**Sales Advisor**”) to assist the Monitor and the Vendors in the implementation of the SISP.
- D. Pursuant to the SISP, the Purchaser has been selected as the Successful Bidder and as such, the Purchaser has agreed to subscribe for, and the Vendors have agreed to issue, the Purchased Shares on and pursuant to the terms set forth herein.

**NOW THEREFORE**, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

- (a) **“Account Receivables”** means, in respect of the Vendors’ Continuing Project Contracts, the Vendors’ right, title, and interest in all accounts receivable (including unbilled revenue from work in progress), bills receivable, trade accounts, book debts, insurance claims, and choses in action, whether now or hereafter due or owing to the Vendors after the Closing Date, and relating to the Business or the Retained Assets. This includes any unpaid accrued interest on such items and any related security or collateral (including cash and recoverable deposits), to the extent attributable to the period prior to Closing.
- (b) **“Administration Charge”** has the meaning given to it in the Initial Order.
- (c) **“Affiliate”** means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person’s investment funds and managed accounts and any funds managed or directed by the same investment advisor.
- (d) **“Agreement”** means this subscription agreement and all attachments and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this stalking horse subscription agreement and all attached Schedules and Exhibits, and unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits are to Articles, Sections, Schedules and Exhibits in this stalking horse subscription agreement.
- (e) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the Transactions contemplated by this Agreement, the members of the Applicants, the Purchaser, the Business, or any of the Purchased Shares or the Retained Liabilities.
- (f) **“Applicants”** means, collectively, Earth Boring Co. Limited, Yarbridge Holdings Inc., Trolan Investments Ltd., and Yarfield Services Limited and from and after the

time Residual Co. becomes an applicant under the Initial Order, “**Applicants**” shall include Residual Co.

- (g) “**Approval and Reverse Vesting Order**” means an order of the CCAA Court in a form to be mutually agreed upon by the Purchaser and the Vendors, each acting reasonably.
- (h) “**Articles of Reorganization**” means, to the extent required, articles of reorganization in respect of the Vendors’ authorized and issued share capital immediately prior to completion of the Transactions to provide for a redemption right in favour of the Vendors or such other provision acceptable to the Vendors and the Purchaser, acting reasonably, that would result in holders of Existing Shares ceasing to hold their Existing Shares at the time such articles are filed and effective in accordance with the Closing Sequence and receiving “nil” consideration, such articles of reorganization to be in form and substance satisfactory to the Purchaser, acting reasonably.
- (i) “**BDC**” means Business Development Bank of Canada.
- (j) “**Benefit Plans**” means the group insurance policy held by the Applicants with Group Registered Retirement Saving Plans of the Vendors in place as of the Closing Time; and (b) group insurance policy held by the Applicants with Sun Life Financial bearing policy number 166849.
- (k) “**BMO**” means Bank of Montreal.
- (l) “**BMO Leases**” means the Bank of Montreal lease no. 39453 relating to the Herrenknecht 2017 Micro Tunneling System and the Bank of Montreal lease no. 39504 relating to the 2011 Link Belt HTC86100 Crane, as each is amended, supplemented or otherwise modified from time to time.
- (m) “**Books and Records**” means all information in any form relating to the Retained Assets, including books of account, financial, operations, sale books, tax, Business, marketing, personnel and research information and records, technical information, drill logs, equipment logs, project documents, technical reports, operating guides and manuals and all other documents, files, correspondence and other information, including all data, information and databases stored on computer-related or other electronic media.
- (n) “**Business**” has the meaning given to such term in Recital A.
- (o) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.
- (p) “**Caledon Project**” means the work for the Regional Municipality of Peel subject to an agreement between Aviva Insurance Company of Canada and Earth Boring Co. Limited dated as of June 13, 2025 (as amended, supplemented or otherwise modified from time to time) and is identified as project no. 21039 - “Caledon FM Project” in Schedule 1.1(bb).

- (q) **“Cash Consideration”** has the meaning given to such term in Section 3.1.
- (r) **“CCAA”** has the meaning given to such term in Recital B.
- (s) **“CCAA Charges”** means the Administration Charge, the Director’s Charge, the DIP Lender’s Charge, the Sales Advisor Charge, and the Lien Charge.
- (t) **“CCAA Court”** has the meaning given to such term in Recital B.
- (u) **“CCAA Proceedings”** means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial Order.
- (v) **“Claims”** means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto.
- (w) **“Closing”** means the completion of the Transactions in accordance with the provisions of this Agreement.
- (x) **“Closing Date”** means a date no later than five (5) Business Days after the conditions set forth in ARTICLE 7 have been satisfied or waived, other than the conditions set forth in ARTICLE 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.
- (y) **“Closing Documents”** means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.
- (z) **“Closing Sequence”** means the sequence set forth in Schedule 1.1(z), which may be updated from time to time in accordance with Section 10.2 until two (2) Business Days prior to the Closing Date.
- (aa) **“Closing Time”** means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (bb) **“Continuing Project Contracts”** means the construction projects currently being performed by the Vendors, including those listed in Schedule 1.1(bb).
- (cc) **“Cure Costs”** means the amounts, if any, that are required to cure any monetary defaults of the Applicants under any Retained Contract, or any Retained Lease.
- (dd) **“Deposit”** means a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor, or such other form of deposit as is acceptable to the Monitor), payable to the Monitor in trust, in an amount equal to \$ [REDACTED].

- (ee) **“DIP Facility”** means amounts available under the DIP Term Sheet.
- (ff) **“DIP Lender”** has the meaning given to such term in Recital B.
- (gg) **“DIP Lender’s Charge”** has the meaning given to it in the Initial Order.
- (hh) **“DIP Term Sheet”** means the commitment letter between the Applicants, as borrowers and the DIP Lender, as lender, dated April 14, 2025 pursuant to which the DIP Lender agreed to advance to the Applicants the maximum principal amount under the DIP Facility, as may be amended from time to time.
- (ii) **“Director’s Charge”** has the meaning given to it in the Initial Order.
- (jj) **“Employee Liabilities”** means wages, vacation pay, and Benefit Plans owing by any Vendors to any Retained Employee accruing to and after the Closing Time.
- (kk) **“Employees”** means individuals employed or retained by the Vendors, on a full-time, part-time or temporary basis, including those employees on disability leave, parental leave or other absence, and **“Employee”** means any one of them.
- (ll) **“Encumbrance”** means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.
- (mm) **“Encumbrances to be Discharged”** means all Encumbrances on the Retained Assets, including without the CCAA Charges and any other charge granted by the Court in the CCAA Proceedings, excluding only the Permitted Encumbrances.
- (nn) **“Equipment”** means all machinery, tools, vehicles, and other tangible assets owned, leased, or used by the Vendors in connection with the operation of its Business, including but not limited to excavators, bulldozers, loaders, cranes, trucks, trailers, generators, compressors, scaffolding, and related attachments, accessories, and spare parts, whether located on job sites, the Real Properties, in storage, or at the Vendors’ facilities, and whether in operational condition or not, as of the Closing Date.
- (oo) **“Equity Interests”** means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.
- (pp) **“Excluded Assets”** has the meaning given to such term in Section 2.2.
- (qq) **“Excluded Contracts”** means all contracts which have been or will be disclaimed by the Applicants in the CCAA Proceedings and those contracts of the Vendors including those listed on Schedule 1.1(qq).
- (rr) **“Excluded Leases”** means all leases which are not Retained Leases, including those which have been or will be disclaimed by the Applicants in the CCAA Proceedings and including those leases of the Vendors listed on Schedule 1.1(rr).

- (ss) “**Excluded Liabilities**” has the meaning given to such term in Section 2.5.
- (tt) “**Excluded Caledon AP**” means in respect of the Caledon Project, all unpaid accounts payable relating to all work completed prior to the Closing Date by any of the Vendors for which the Vendors have received an invoice for prior to the Closing Date.
- (uu) “**Excluded Caledon AR**” has the meaning given to such term in Section 2.2(e).
- (vv) “**Existing Shares**” means:
  - (i) the existing Class “A” preference shares and common shares in the capital of Earth Boring Co. Limited.;
  - (ii) the existing Class “A” common shares in the capital of Yarbridge Holdings Inc.; and
  - (iii) the existing Class “A” preference shares and common shares in the capital of Trolan Investments Ltd.
- (ww) “**Filing Date**” means April 17, 2025.
- (xx) “**Final Order**” means with respect to any order or judgment of the CCAA Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, re-argument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, re-argument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Vendors and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, re-argument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.
- (yy) “**Governmental Authority**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.
- (zz) “**Initial Order**” has the meaning given to such term in Recital B.
- (aaa) “**Lien Charge**” has the meaning given to it in the Initial Order.

- (bbb) **“Monitor”** has the meaning given to such term in Recital B.
- (ccc) **“Monitor’s Certificate”** means the certificate delivered to the Purchaser, and filed with the CCAA Court, by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor, in its sole discretion, from each of the Vendors and the Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the Transactions contemplated by this Agreement have been completed.
- (ddd) **“Outside Date”** has the meaning given to such term in Section 9.1(b).
- (eee) **“Parties”** means the Vendors and the Purchaser collectively, and **“Party”** means any one of them, as the context requires.
- (fff) **“Permitted Encumbrances”** means the Encumbrances listed in Schedule 1.1(fff).
- (ggg) **“Person”** includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.
- (hhh) **“Post-Filing Trade Liabilities”** means any and all indebtedness, liabilities, or obligations incurred by any member of the Vendors arising on or after the Filing Date, in connection with the ongoing operations or in respect to the Continuing Project Contracts of the Vendors, including amounts payable to suppliers, service providers, or other third parties for goods delivered or services performed after the Filing Date.
- (iii) **“Pre-Closing Reorganization”** has the meaning given to such term in Section 2.8.
- (jjj) **“Prior Equity Interests”** means any and all of the following that exists immediately prior to Closing and relates to any of the Vendors: (i) Equity Interests; and (ii) any of the following that is convertible or exchangeable for any Equity Interest or which provide for or require the issuance, conversion, sale or transfer by the Vendors of any Equity Interests of the Vendors or otherwise relating thereto, namely, any agreement, contract, plan, indenture, deed, certificate, subscription right, conversation right, pre-emptive right, option, warrant, security, debenture, loan, note or other document, instrument, right or commitment of any character whatsoever; provided for avoidance of doubt that the Purchased Shares shall not constitute Prior Equity Interests.
- (kkk) **“Property”** has the meaning given to such term in Recital C.
- (lll) **“Purchase Price”** has the meaning given to such term in Section 3.1.
- (mmm) **“Purchased Shares”** has the meaning given to such term in Section 2.1(a).

- (nnn) **“Purchaser”** means Barrier Ridge Capital Inc., in trust for and on behalf of a corporation to be incorporated.
- (ooo) **“Real Properties”** means the real property municipally known as 960 Zelco Drive, Burlington, Ontario and legally described as PCL 4-3 , SEC M232 ; PT LT 4 , PL M232 , PART 7 & 8 , 20R8487 ; PCL 5-2 , SEC M232 ; PT LT 5 , PL M232 , PART 9 , 20R8487 ; S/T H150036 BURLINGTON in PIN: 07035-0005 (LT) owned by Yarbridge Holdings Inc. and real property municipally known as 75 Steelwell Road, Brampton, ON and legally described as PCL BLOCK 16-1, SEC 43M955 ; BLK 16, PL 43M955 , S/T A RIGHT AS IN LT1081518 ; S/T DP2708 ; BRAMPTON in PIN: 14028-0023 (LT) owned by Trolan Investments Ltd., and **“Real Property”** means any one of them.
- (ppp) **“Residual Co.”** a corporation to be incorporated by the Vendors in advance of Closing, to which the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities will be transferred to as part of the Closing Sequence, which shall have no issued and outstanding shares.
- (qqq) **“Retained Assets”** has the meaning given to such term in Section 2.3.
- (rrr) **“Retained Contracts”** means those contracts listed in Schedule 1.1(rrr) and the Continuing Project Contracts.
- (sss) **“Retained Employees”** means all Employees of the Vendors as of the Closing Date other than the Terminated Employees.
- (ttt) **“Retained Leases”** means: (a) the equipment leases listed in Schedule 1.1(ttt), (b) the vehicle leases listed in Schedule 1.1(ttt), and (c) the leases or agreements in the nature of a lease or right of occupancy of real or personal property to which any Vendor is a party whether as lessor or lessee as listed in Schedule 1.1(ttt).
- (uuu) **“Retained Liabilities”** has the meaning given to such term in Section 2.4.
- (vvv) **“Sales Advisor”** has the meaning given to such term in Recital C.
- (www) **“Sales Advisor Charge”** has the meaning given to it in the Initial Order.
- (xxx) **“SISP”** has the meaning given to such term in Recital C.
- (yyy) **“SISP Approval Order”** has the meaning given to such term in Recital C.
- (zzz) **“Successful Bid”** has the meaning ascribed to it in the SISP, and the bidder of making such bid is the **“Successful Bidder”**.
- (aaaa) **“Tax”** and **“Taxes”** means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, GST/HST, value added, consumption, sales, use, excise, stamp, withholding,

business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario, and other government pension plan premiums or contributions.

- (bbbb) **“Tax Act”** means the Income Tax Act (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.
- (cccc) **“Tax Return”** means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.
- (dddd) **“Taxing Authorities”** means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and **“Taxing Authority”** means any one of the Taxing Authorities.
- (eeee) **“Terminated Employees”** means those Employees terminated by the applicable Vendors on or prior to the Closing Date at the sole discretion of the Purchaser, provided that in respect of terminations of any Employees who are unionized, the applicable Vendors’ prior consent is required, and such terminations of any unionized Employees must comply with the applicable collective bargaining agreement.
- (ffff) **“Transaction”** means, collectively, the Pre-Closing Reorganization, the purchase and issuance of the Purchased Shares pursuant to this Agreement and all other transactions contemplated by this Agreement that are to occur contemporaneously with the purchase and issuance of the Purchased Shares.
- (gggg) **“Vendors”** means, collectively, Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd. and **“Vendor”** means any one of them.

## 1.2 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

## 1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

#### **1.4 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

#### **1.5 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "\$" are to Canadian dollars.

#### **1.6 Certain Phrases**

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation" and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

#### **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the Transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the Transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

#### **1.8 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

#### **1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto, and provided that such amendment is consented to by the Monitor. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **1.10 Governing Law; Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

### **1.11 Incorporation of Schedules and Exhibits**

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof, in each case, as such Schedules may be amended pursuant hereto:

|                   |                              |
|-------------------|------------------------------|
| Schedule 1.1(z)   | Closing Sequence             |
| Schedule 1.1(bb)  | Continuing Project Contracts |
| Schedule 1.1(qq)  | Excluded Contracts           |
| Schedule 1.1(rr)  | Excluded Leases              |
| Schedule 1.1(fff) | Permitted Encumbrances       |
| Schedule 1.1(rrr) | Retained Contracts           |
| Schedule 1.1(ttt) | Retained Leases              |

### **1.12 Non-Business Days**

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

### **1.13 Computation of Time Periods**

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

## **ARTICLE 2 SUBSCRIPTION AND ASSET PURCHASE**

### **2.1 Agreement to Subscribe for and Issue Purchased Shares**

- (a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, in accordance with the Closing Sequence, the Vendors shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of the Vendors from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances other than Permitted Encumbrances (the "**Purchased Shares**").
- (b) Pursuant to the Approval and Reverse Vesting Order and, if required, the Articles of Reorganization, in accordance with the Closing Sequence, all Equity Interests of the Vendors outstanding prior to the issuance of the Purchased Shares, other than the Purchased Shares, shall be cancelled, without consideration, and the Purchased Shares shall represent 100% of the outstanding Equity Interests in the Vendors after such cancellation and issuance.

## 2.2 Excluded Assets

As of Closing and pursuant to the Approval and Reverse Vesting Order, the assets of the Vendors shall not include any of the following assets (collectively, the "**Excluded Assets**"):

- (a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily relate to any of the Excluded Liabilities or Excluded Assets, provided that the Vendors may retain original copies of any such records if required by Applicable Law and provided further that the applicable Vendor may take copies of all Tax records and books and records pertaining to such records to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return;
- (b) the Excluded Contracts;
- (c) the Excluded Leases;
- (d) all communications, information or records, written or oral, in the possession of the Vendors (other than corporate and minute book records of the Vendors) prior to Closing that are in any way related to (i) the Transactions contemplated by this Agreement, (ii) the sale of the Purchased Shares, (iii) any Excluded Asset or (iv) any Excluded Liability;
- (e) in respect of the Caledon Project, all uncollected accounts receivable that have been invoiced by the applicable Vendor prior to the Closing Date relating to all work completed prior to the Closing Date by any of the Vendors (collectively, the "**Excluded Caledon AR**") but which has not been collected prior to the Closing Date; and
- (f) any rights which accrue to Residual Co. under the Transaction documents.

## 2.3 Retained Assets

On the Closing Date, the Vendors shall retain, free and clear of any and all Encumbrances other than Permitted Encumbrances, all of the assets owned by them on the date of this Agreement and any assets acquired by them up to and including Closing, including without limitation, the

Continuing Project Contracts, the Real Properties, the Retained Leases and the Retained Contracts (the “**Retained Assets**”), except:

- (a) any assets sold in the ordinary course of business between the date hereof and the Closing Date in accordance with the terms of this Agreement;
- (b) the Cash Consideration; and
- (c) Excluded Assets.

## 2.4 Retained Liabilities

Pursuant to this Agreement and the Approval and Reverse Vesting Order, as of the Closing Time, the only obligations and liabilities of the Vendors shall consist of only the items specifically set forth below (collectively, the “**Retained Liabilities**”):

- (a) Employee Liabilities;
- (b) the mortgage and indebtedness including accrued interest and fees (but excluding any fees secured by the Administration Charge or relating thereto whether or not incurred or paid by BDC) of Yarbridge Holdings Inc. and Trolan Investments Ltd. to BDC shall remain in place in the amount as confirmed by the Monitor, the Vendors and the Purchaser and on substantially the same terms other than any amendments acceptable to the Purchaser and BDC in their sole discretion;
- (c) ordinary course Post-Filing Trade Liabilities in respect of the Continuing Project Contracts that remain outstanding as at the Closing Time other than the Excluded Caledon AP;
- (d) the Retained Contracts and the Cure Costs and obligations of the Vendors under the Retained Contracts from and after the Closing Time other than the Excluded Caledon AP;
- (e) the Retained Leases and the Cure Costs and obligations arising from or in connection with the performance of the Retained Leases, from and after the Closing Time;
- (f) Tax Liabilities of the Vendors for any period, or the portion thereof, beginning on or after the Closing Date.

## 2.5 Excluded Liabilities

Except for the Retained Liabilities, all Claims and all debts, obligations and liabilities of the Vendors or any predecessors thereof, of any kind or nature, shall be assigned to, and become the sole obligation of, Residual Co. pursuant to the terms of the Approval and Reverse Vesting Order and this Agreement, and, as of the Closing, the Vendors shall not have any obligation, duty, or liability of any kind whatsoever, except for Retained Liabilities, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of Residual Co., including *inter alia*, and any and all liability relating to any change of control provision that may arise in connection

with the change of control contemplated by the Transactions hereunder and to which the Vendors may be bound as at Closing, all liabilities relating to or under the Excluded Contracts, Excluded Leases, and Excluded Assets, liabilities for all Terminated Employees (collectively, the “**Excluded Liabilities**”).

## **2.6 Transfer of Excluded Liabilities to Residual Co.**

On the Closing Date, pursuant to the terms of the Approval and Reverse Vesting Order, the Vendors shall assign and transfer the Excluded Liabilities to Residual Co., and Residual Co. shall assume the Excluded Liabilities in consideration of the Excluded Assets acquired by Residual Co. All of the Excluded Liabilities shall be discharged from the Vendors as of the Closing, pursuant to the Approval and Reverse Vesting Order.

## **2.7 Transfer of Excluded Assets to Residual Co.**

On the Closing Date, pursuant to the terms of the Approval and Reverse Vesting Order and in consideration for Residual Co. assuming the Excluded Liabilities pursuant to Section 2.6 of this Agreement, the Vendors shall assign and transfer the Excluded Assets to Residual Co., and the Excluded Assets shall vest in Residual Co. pursuant to the Approval and Reverse Vesting Order.

## **2.8 Pre-Closing Reorganization**

- (a) Subject to Section 2.8(b), the Vendors agree that, no earlier than the Business Day immediately prior to the Closing Date and upon request of the Purchaser, the Vendors shall, and shall cause any of the Applicants to, with the consent of the Vendors, not to be unreasonably withheld, conditioned or delayed, perform such other reorganizations of its corporate structure, capital structure, business, operations and assets or such other transactions as Purchaser may request, acting reasonably (each such action, a “**Pre-Closing Reorganization**”). The Vendors agree to use commercially reasonable efforts to cooperate with the Purchaser and its advisors to determine the nature of any Pre-Closing Reorganizations that might be undertaken and the manner in which they would most effectively be undertaken, including filing or causing the Vendors to file available elections or designations reasonably required to effect the Pre-Closing Reorganizations if such filing is reasonably proposed to be made at or prior to Closing, and to cooperate with the Purchaser and its advisors to seek to obtain consents or waivers which might be required under any Retained Contracts or authorizations from Governmental Authorities in respect of any Pre-Closing Reorganization.
- (b) Notwithstanding the foregoing, the Vendors will not be obligated to participate in any Pre-Closing Reorganization if the Vendors determine acting reasonably that such Pre-Closing Reorganization would (i) materially impair, impede, delay or prevent the satisfaction of the conditions set forth in ARTICLE 7, or the ability of the Purchaser or Vendors to consummate, or materially delay the consummation of, the Transaction, or (ii) (A) materially alter or impact the consideration which the Applicants and/or their applicable stakeholders will benefit from as part of the Transactions, or (B) have adverse tax consequences, or impose any Liability on, the remaining Applicants or any director of the Applicants in each case that is greater than the amount of such tax consequences or Liability in the absence of such action.

- (c) This Agreement (including the Closing Sequence) will be amended and restated as required to give effect to a Pre-Closing Reorganization.

### ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

#### 3.1 Purchase Price

The total aggregate consideration in respect of the Purchased Shares shall be equal the aggregate value of the amounts set out below and comprised of the following (the “**Purchase Price**”):

- (a) subject to the adjustment in Section 3.2 below, payment in cash of approximately \$ [REDACTED] (the “**Cash Consideration**”) for the Equipment;
- (b) payment of 50% of the Accounts Receivable derived from the Continuing Project Contracts up to a maximum of \$ [REDACTED] as and when such Account Receivables are actually collected after the Closing Date. For purposes of this subsection, the Excluded Caledon AR shall not be included when calculating the Accounts Receivable in this section 3.1(b);
- (c) an amount equal to the Cure Costs for the Retained Leases and the Retained Contracts as of the Closing Time;
- (d) an amount equal to \$250,000 on account of proceeds of litigation as between Monteith & Sutherland Limited v. Novex Insurance Company bearing court file No: CV-24-4336-0000 as and when such proceeds are actually collected from and after the Closing Date (the “**Litigation Proceeds**”) and provided that the gross Litigation Proceeds available to the Vendors are in excess of \$500,000 and pursuant to which Monteith & Sutherland Limited was engaged by the Earth Boring Co. Ltd on a construction project, which proceedings are subject to a memorandum of agreement between Earth Boring Co. Ltd, Monteith & Sutherland Limited, and Novex Insurance Company dated as of June 26, 2025 (the “**Monteith Litigation**”); and
- (e) the total obligations and indebtedness of the Retained Liabilities as of the Closing Time (approx. \$ [REDACTED]).

#### 3.2 Purchase Price Adjustment

To the extent the DIP Facility: (a) is or is greater than \$5,500,001 as of the Closing Time, then the Cash Consideration shall be increased dollar for dollar by the amount of the difference; or (b) is or is less than \$5,500,000 as of the Closing Time, then the Cash Consideration shall be decreased dollar for dollar by the amount of the difference.

#### 3.3 Deposit

- (a) The Purchaser has paid a Deposit that is equal to \$ [REDACTED] in accordance with the SISP. The Parties agree that the Monitor shall cause the Deposit to be placed in a non-interest-bearing account on completion of the Transaction.
- (b) On Closing, the Parties acknowledge that the Cash Consideration to be paid by the Purchaser will be net of the Deposit in accordance with Section 3.4 below.

### **3.4 Satisfaction of the Purchase Price**

- (a) the Cash Consideration pursuant to Section 3.1(a), as it may be adjusted pursuant to Section 3.2, shall be paid and satisfied on the Closing Date by the Purchaser paying the Cash Consideration less the amount of the Deposit to the Monitor, to be held in escrow and paid in accordance with the Closing Sequence;
- (b) following the Closing Date, the Purchaser shall cause the applicable Vendor to pay to the Monitor the amounts payable pursuant to Section 3.1(b) following receipt of the Accounts Receivable derived from the Continuing Project Contracts;
- (c) the amounts payable pursuant to Section 3.1(c) shall be payable by the Purchaser in cash to the applicable counter-party of the Retained Leases and Retained Contracts;
- (d) following the Closing Date, the Purchaser shall cause the applicable Vendor to pay to the Monitor the amounts payable, if any, pursuant to Section 3.1(d) within three Business Days following receipt of the Litigation Proceeds from the Monteith Litigation; and
- (e) the amounts contemplated by Section 3.1(e) shall be fully paid and satisfied by the retention of Retained Leases, Retained Contracts and Retained Liabilities (and for avoidance of doubt, without further cash payment).

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE VENDORS**

Each of the Vendors represents and warrants to the Purchaser, as follows, and acknowledges that the Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Shares:

### **4.1 Due Authorization and Enforceability of Obligations**

Subject to the granting of the Approval and Reverse Vesting Order, this Agreement has been duly authorized, executed and delivered by it, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

### **4.2 Existence and Good Standing**

Each of the Vendors is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the Transaction contemplated hereunder.

#### **4.3 Absence of Conflicts**

The execution and delivery of this Agreement by the Vendors, the completion by the Vendors of their respective obligations hereunder and the consummation by each of the Vendors of the Transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the entry of the Approval and Reverse Vesting Order by the CCAA Court.

#### **4.4 No Actions**

There is not, as of the date hereof, pending or, to the Vendors' knowledge, threatened against any Applicant or any of its properties, nor has any Applicant received any written notice in respect of, any Claim, potential Claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent the Vendors from executing and delivering this Agreement, performing their obligations hereunder and consummating the Transactions and agreements contemplated by this Agreement.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Vendors as follows, and acknowledges that the Vendors are relying upon the following representations and warranties in connection with the sale of the Purchased Shares:

#### **5.1 Due Authorization and Enforceability of Obligations**

This Agreement has been duly authorized, executed and delivered by the Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

#### **5.2 Existence and Good Standing**

The Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the Transactions contemplated by this Agreement.

#### **5.3 Absence of Conflicts**

The execution and delivery of this Agreement by the Purchaser and the completion by the Purchaser of its obligations hereunder and the consummation of the Transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

#### **5.4 Approvals and Consents**

The execution and delivery of this Agreement by the Purchaser, the completion by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the Transactions contemplated herein, do not and will not require any consent, approval or other action, with or by, any Governmental Authority, other than as contemplated by the granting of the Approval and Reverse Vesting Order by the CCAA Court.

#### **5.5 No Actions**

There is not, as of the date hereof, pending or, to the Purchaser's knowledge, threatened against it or any of its properties, nor has the Purchaser received notice in respect of, any Claim, potential Claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the Transactions and agreements contemplated by this Agreement.

#### **5.6 Cash Consideration; Availability of Funds**

- (a) The Purchaser will have executed on or prior to Closing, the requisite documents to allow the Purchaser, and the Purchaser is and will be duly authorized, to, among other things, deliver the Cash Consideration in connection with the consummation of the Closing hereunder, which documents shall be delivered by the Purchaser to the Vendors.
- (b) The Purchaser will have on Closing, sufficient unrestricted funds and financial capacity to consummate the Transactions contemplated by this Agreement, including payment of the Cash Consideration.

#### **5.7 Residence**

The Purchaser is not a non-resident of Canada within the meaning of the Tax Act.

### **ARTICLE 6 AS IS, WHERE IS**

The Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Shares, the Retained Liabilities and all related operations of the Vendors, and, based solely thereon and the advice of its financial, legal and other advisors, has determined to proceed with the Transactions contemplated by this Agreement. The Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of the Vendors expressly set forth in ARTICLE 4, the Purchaser understands, acknowledges and agrees that all other representations, warranties, conditions and statements of any kind or nature, expressed or

implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendors or the Business, or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by each of the Vendor, the other Vendors, their respective financial and legal advisors and the Monitor and its legal counsel. THE PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE VENDORS EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE PURCHASER IS ACQUIRING THE PURCHASED SHARES ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE VENDORS, THE OTHER APPLICANTS, THE MONITOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE VENDORS, THE OTHER APPLICANTS OR THE MONITOR WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE VENDORS, THE BUSINESS, THE PURCHASED SHARES, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

## **ARTICLE 7 CONDITIONS**

### **7.1 Conditions for the Benefit of the Purchaser and Vendors**

The respective obligations of the Purchaser and the Vendors to consummate the Transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* - no provision of any Applicable Law and no order from a Court of competent jurisdiction preventing or otherwise frustrating the consummation of the purchase of the Purchased Shares or any of the other Transactions pursuant to this Agreement shall be in effect;
- (b) *Final Orders* – the Approval and Reverse Vesting Order shall have been issued and entered and shall be Final Order;
- (c) *Successful Bid* – this Agreement will be the Successful Bid (as determined pursuant to the SISP); and

The Parties acknowledge that the foregoing conditions are for the mutual benefit of each of the Vendors and the Purchaser. Any condition in this Section 7.1 may be jointly waived by the Vendors and by the Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any

such waiver will be binding on the Vendors and the Purchaser, as applicable, only if made in writing.

## 7.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to consummate the Transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Purchaser):

- (a) *Performance of Covenants* - the covenants contained in this Agreement to be performed or complied with by the Vendors at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* - the representations and warranties of the Vendors contained in ARTICLE 4 shall be true and correct in all respects as of the Closing Date, as if made at, and as of, such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the Transactions contemplated by this Agreement;
- (c) *Officers' Certificates* – the Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Subsections 7.2(a) and 7.2(b), signed for and on behalf of the Vendors by an executive officer of the Vendors or other Persons acceptable to the Purchaser, without personal liability, in each case in form and substance reasonably satisfactory to the Purchaser;
- (d) *Vendors' Deliverables* - the Vendors shall have delivered to the Purchaser all of the deliverables contained in Section 10.3 in form and substance reasonably satisfactory to the Purchaser; and
- (e) *Terminated Employees* - the applicable Vendor shall have terminated the employment of the Terminated Employees, and all liabilities owing to any such Terminated Employees in respect of such terminations, including all amounts owing on account of or damages in lieu of, statutory notice, termination payments, severance, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities which, pursuant the Approval and Reverse Vesting Order, shall be assigned and transferred as against the applicable Vendor to, and assumed by, Residual Co.
- (f) *No Material Adverse Change* - from the date of this Agreement up to the Closing Time, no material adverse change has occurred which would materially: (a) adversely affect the value of the Retained Assets, (b) increase the Retained Liabilities, and/or (c) adversely affect the Business, operations, condition (financial or otherwise) of any of the Vendors.

- (g) *Personal Guarantees* – BMO shall have released the personal guarantors from the BMO indebtedness on terms satisfactory to the Purchaser, BMO and the personal guarantors.
- (h) *BDC Mortgages* - the mortgage and indebtedness including accrued interest and fees (but excluding any fees secured by the Administration Charge or relating thereto whether or not incurred or paid by BDC) of Yarbridge Holdings Inc. and Trolan Investments Ltd. to BDC shall remain in place in the amount as confirmed by the Monitor, the Vendors and the Purchaser and on substantially the same terms other than any amendments acceptable to the Purchaser and BDC in their sole discretion.
- (i) *BMO Leases* - the BMO Leases shall be paid out by no later than November 1, 2025.
- (j) *Management* - the existing executives and management of the Vendors remain with the applicable Vendors on terms satisfactory to the Purchaser.

### **7.3 Conditions for the Benefit of the Vendors**

The obligation of the Vendors to consummate the Transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Vendors of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Vendors):

- (a) *Performance of Covenants* - the covenants contained in this Agreement to be performed by the Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* - the representations and warranties of the Purchaser contained in ARTICLE 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the Transactions contemplated by this Agreement;
- (c) *Officer's Certificates* – the Vendors shall have received a certificate confirming the satisfaction of the conditions contained in Subsections 7.3(a) and 7.3(b) signed for and on behalf of the Purchaser without personal liability by an executive officer of the Purchaser or other Persons acceptable to the Vendors, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to the Vendors, acting in a commercially reasonable manner; and
- (d) *Purchaser Deliverables* – The Purchaser shall have delivered to the Vendors all of the deliverables contained in Section 10.4 in form and substance satisfactory to the Vendors, acting in a commercially reasonable manner.

**ARTICLE 8**  
**ADDITIONAL AGREEMENTS OF THE PARTIES**

**8.1 Access to Information and Properties**

- (a) Until the Closing Time, the Vendors, with oversight of the Monitor, shall give to the Purchaser's personnel engaged in the Transactions contemplated by this Agreement and their accountants, legal advisors, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books, records, and other information relating to the Business, and shall furnish them with all such information relating to the Business, the Applicants, the Retained Assets, the Retained Liabilities and the list of Employees as Purchaser may reasonably request in connection with the Transaction contemplated by this Agreement, such requests to be made to the Monitor; provided that such access shall be conducted at Purchaser's expense, in accordance with Applicable Law and under supervision of the Monitor or the Vendors' senior management and in such a manner as to maintain confidentiality, and the Vendors will not be required to provide access to or copies of any such Books and Records if: (i) the provision thereof would cause applicable Vendors to be in contravention of any Applicable Law; (ii) breach the terms of the SISP Approval Order; or (iii) making such information available would: (1) result in the loss of any lawyer-client or other legal privilege; or (2) cause applicable Vendors to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Vendors or any of its Affiliates are a party). Notwithstanding anything in this Section 8.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person.
- (b) Following the Closing, the Purchaser shall make all Books and Records of the Applicants as of the Closing reasonably available to the Monitor and any trustee in bankruptcy of any of the Applicants upon at least five (5) Business Days prior written notice, for a period of seven (7) years after Closing, and shall, at such Party's expense, permit the Monitor and any trustee in bankruptcy of the Applicants to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that Purchaser shall not be obligated to make such Books and Records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing Business and operations of the Vendors and their Affiliates, as determined by the Applicants, acting reasonably.
- (c) Following the Closing, the Applicants and Residual Co. shall make all Books and Records comprising Excluded Assets reasonably available to the Monitor and any trustee in bankruptcy of any of the Applicants upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such Party's expense, permit the Monitor and any trustee in bankruptcy of the Applicants to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that such Applicant shall not be obligated to make such Books and Records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii)

unreasonably interfere with the ongoing Business and operations of the Applicants and their Affiliates, as determined by the Applicants, acting reasonably.

## 8.2 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:
- (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the Transactions contemplated hereby; and
  - (ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Transactions contemplated by this Agreement.
  - (iii) from the date hereof until the Closing Date, each of the Vendors and Purchaser hereby agrees to cause its representatives to, keep the other Party informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by each of the Vendors, Purchaser or the Monitor, as to the Vendors or Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.
- (b) Each of the Vendors and the Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, reasonably necessary for the consummation of the Transactions contemplated by this Agreement, and to take such other actions to consummate or implement as soon as reasonably practicable, the Transactions contemplated by this Agreement.
- (c) From the date hereof until the Closing Date, the Vendors hereby agree, and hereby agrees to cause their representatives to, promptly notify the Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement.
- (d) Each of the Vendors and the Purchaser agree to use commercially reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably

necessary to obtain any material third-party consents and approvals as may be required in connection with the Transaction contemplated by this Agreement.

- (e) The Vendors agree to use commercially reasonable efforts to promptly provide all documentation, copies of agreements and information reasonably required by the Purchaser to complete and finalize the Schedules to this Agreement. Such information and documentation shall be provided to the Purchaser on an ongoing basis following execution of this Agreement and in any event shall be provided to the Purchaser no later than ten (10) days prior to the hearing of the Applicants' motion to the CCAA Court seeking the Approval and Reverse Vesting Order.

### **8.3 Court Orders and Related Matters**

- (a) From and after the date of this Agreement and until the Closing Date, the Vendors shall deliver to the Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, and other papers to be filed or submitted by any of the Applicants in connection with or related to this Agreement, including with respect to the Approval and Reverse Vesting Order, for Purchaser's prior review at least two (2) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for two (2) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). The Vendors acknowledge and agree (i) that any such pleadings, motions, notices, statements, applications, schedules, or other papers shall be in form and substance satisfactory to the Purchaser, acting reasonably, and (ii) to consult and cooperate with Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.
- (b) Notice of the motions seeking the issuance of the Approval and Reverse Vesting Order shall be served or be caused to be served by the Applicants on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Applicants or Purchaser, acting reasonably.
- (c) As soon as practicable if Purchaser is selected or deemed to be the Successful Bidder in accordance with the SISP, the Applicants shall file a motion seeking the approval of the Approval and Reverse Vesting Order.
- (d) If the Approval and Reverse Vesting Order relating to this Agreement is appealed or a motion for leave to appeal, rehearing, re-argument, reconsideration, varied or set aside is filed with respect thereto, each of the Applicants agree (subject to the available liquidity of each of the Applicants) to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.
- (e) The Vendors acknowledge and agree, that the Approval and Reverse Vesting Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Shares shall be issued to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

## ARTICLE 9 TERMINATION

### 9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of each of the Vendors and the Purchaser;
- (b) by the Purchaser or any of the Vendors, if Closing has not occurred on or before September 15, 2025 or such later date agreed to by each of the Vendors and the Purchaser in writing in consultation with the Monitor (the “**Outside Date**”), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in ARTICLE 7 by the Outside Date;
- (c) by the Purchaser or any of the Vendors, if at any time after the date hereof any of the conditions in ARTICLE 7 is not capable of being satisfied by the applicable dates required in ARTICLE 7 of this Agreement or if not otherwise required, by the Outside Date, provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in ARTICLE 7 by the Outside Date;
- (d) by the Purchaser or any of the Vendors, upon dismissal of the motion for the Approval and Reverse Vesting Order (or if any such order is stayed, vacated, varied or set aside without the consent of the Purchaser);
- (e) by the Purchaser or any of the Vendors, if a court of competent jurisdiction, including the CCAA Court or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;
- (f) by any of the Vendors, if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date, and such violation or breach has not been waived by the any of the Vendors, or cured by the Purchaser within ten (10) Business Days after written notice thereof from the Vendors, unless the Vendors are in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date; and
- (g) by the Purchaser, if there has been a material violation or breach by any of the Vendors of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date, and such violation or breach has not been waived by the Purchaser, or cured by any of the Vendors within ten (10) Business Days after written notice thereof from the Purchaser, unless the Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Subsection 9.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

## **9.2 Effect of Termination**

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that: (i) this Section 9.2, Section 11.1, Section 11.2, and Section 11.7 shall survive; and (ii) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 11.3.

## **9.3 Treatment of Deposit**

In the event that this Agreement is terminated pursuant to Section 9.1(f) of this Agreement, then the Deposit shall be forfeited by the Purchaser to the Monitor as a liquidated damage, and not as a penalty. The Parties agree that the Deposit is a genuine estimate of the liquidated damages that the Monitor would suffer in such circumstances (and, for greater certainty, and notwithstanding, any other provision in this Agreement, this shall be the Monitor's sole right and remedy as a result of the Purchaser's breach). To the extent the Monitor is able to retain the Deposit in accordance with this Section 9.3, the Monitor may, in its sole discretion, distribute the full amount of the Deposit to creditors of the Applicants pursuant to their respective priorities. In the event that this Agreement is terminated pursuant to Subsections 9.1(a), 9.1(b), 9.1(c), 9.1(d), 9.1(e) or 9.1(g) of this Agreement, then the Deposit (without interest) shall be promptly returned by the Monitor to the Purchaser.

# **ARTICLE 10 CLOSING**

## **10.1 Location and Time of Closing**

The Closing shall take place virtually by exchange of documents in PDF format on the Closing Date, in accordance with the Closing Sequence (as defined below), and shall be subject to such escrow document release arrangements as the Parties may agree.

## **10.2 Closing Sequence**

On the Closing Date, subject to the terms of the Approval and Reverse Vesting Order, Closing shall take place in the sequence set out in the Closing Sequence. The Purchaser may, as a result of any Pre-Closing Reorganization or otherwise with the prior consent of the Vendors and the Monitor, acting reasonably, amend the Closing Sequence provided that such amendment to the Closing Sequence does not materially alter or impact the Transactions or the consideration which the Vendors and/or its applicable stakeholders will benefit from as part of the Transactions.

## **10.3 Vendors' Deliveries at Closing**

At Closing, the Vendors shall deliver to the Purchaser the following:

- (a) a true and final copy of the Approval and Reverse Vesting Order;
- (b) the certificates contemplated by Section 7.2(c);
- (c) confirmation of the due incorporation and organization of Residual Co. on the terms set forth herein;
- (d) fully executed copy(ies) of the assignment and assumption agreement(s) between the Vendors to Residual Co in respect of the Excluded Contracts, the Excluded Leases, the Excluded Liabilities, the Excluded Assets and all liabilities for the Terminated Employees if these matters are not expressly contained in the Approval and Reverse Vesting Order;
- (e) evidence of completion of any Pre-Closing Reorganization and evidence of the filing of the Articles of Reorganization, if required by the Purchaser;
- (f) copy of a directors resolution of each of the Vendors issuing the Purchased Shares to the Purchaser as fully paid and non-assessable shares, if not covered in the Articles of Reorganization.
- (g) share certificates representing the Subscribed Shares (or other acceptable evidence of the Subscribed Shares); and
- (h) all other documents as reasonably requested by the Purchaser in good faith.

#### **10.4 Purchaser's Deliveries at Closing**

At Closing, the Purchaser shall deliver to the Vendors the following:

- (a) the Cash Consideration;
- (b) the certificates contemplated by Section 7.3(c);
- (c) certificate of status of the Purchaser; and
- (d) all other documents required to effect to the Transaction contemplated by this Agreement, as reasonably requested by the Vendors in good faith.

### **10.5 Monitor's Certificate**

When all conditions to Closing set out in ARTICLE 7 have been satisfied and/or waived by the Vendors or the Purchaser, as applicable, the Vendors and the Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation, in form and substance satisfactory to the Monitor, that all conditions to Closing have been satisfied or waived, subject to the Monitor's delivery of the Monitor's Certificate to the Purchaser in accordance with the Approval and Reverse Vesting Order. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Approval and Reverse Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to each of the Vendors and the Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Vendors and the Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability whatsoever to any of the Vendors or Purchaser or any other Person as a result of filing the Monitor's Certificate.

### **10.6 Simultaneous Transactions**

All actions taken and Transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Closing Sequence and the Approval and Reverse Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

### **10.7 Further Assurances**

As reasonably required by a Party in order to effectuate the Transactions contemplated by this Agreement, Purchaser and each of the Applicants shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the Transactions contemplated by this Agreement. Further, from and after the Closing Date, the Purchaser and each of the Vendors shall provide the Monitor with reasonable access to the financial and operational records of the Vendors (and reasonable related support from employees of the Vendors) on not less than two days prior written notice by the Monitor to the Purchaser in respect to such access.

## **ARTICLE 11 GENERAL MATTERS**

### **11.1 Confidentiality**

After the Closing Time, the remaining Applicants shall maintain the confidentiality of all confidential information relating to the Business and the Vendors, except any disclosure of such information and records as may be required by Applicable Law. If any remaining Applicant, or any of their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause its representative to, provide the Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, the applicable Applicant shall, or shall cause its representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such disclosed information. The remaining Applicants shall instruct their representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 11.1 by any of their representatives.

### **11.2 Public Notices**

No press release or other announcement concerning the Transactions contemplated by this Agreement shall be made by any of the Applicants or Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings), and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by either Party, as applicable with the CCAA Court; and (ii) the Transactions contemplated in this Agreement may be disclosed by the Vendors to the CCAA Court. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the Transactions contemplated by this Agreement and the terms of such Transactions; and
- (b) the Applicants, the Purchaser and their respective professional advisors prepare and file such motions, affidavits, materials, reports and other documents with the CCAA Court containing references to the Transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the Transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

The Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing; provided in the case of reports or other documents prepared or to be filed by the Monitor with the CCAA Court the Purchaser shall be entitled to review only factual information contained therein relating to the terms of the Transactions contemplated in this Agreement. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

### **11.3 Injunctive Relief**

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

### **11.4 Survival**

None of the representations, warranties, covenants (except the covenants in Section 2.1, Section 3.1, ARTICLE 11, Subsection 8.1(a) and Section 8.3, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transactions contemplated hereby shall survive the Closing.

### **11.5 Non-Recourse**

No past, present or future director, officer, Employee, incorporator, member, partner, security holder, Affiliate (provided that for purposes of this Section 11.5, the Purchaser and Vendors shall not be considered Affiliates of each other), agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Purchaser or the Vendors, as applicable, under this Agreement, or for any causes of action based on, in respect of or by reason of the Transactions contemplated hereby.

## 11.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent Purchaser may, upon prior notice to the Vendors, assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; provided that no such assignment or direction shall relieve the Purchaser of its obligations hereunder. This Agreement shall be binding upon and ensure to the benefit of the Parties and their respective permitted successors and permitted assigns. Although not Parties to this Agreement, the Monitor and its respective Affiliates and advisors shall have the benefits expressed to be conferred upon them in this Agreement, including in Section 11.4 (in respect of the Monitor) hereof. Subject to the preceding sentence, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

## 11.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

If to the Purchaser at:

Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated  
Attention: 124 Wellington Street East, Unit A, Aurora, Ontario L4G 1J1  
Attention: Norm Hyde-Whipp  
Email: [nhyde-whipp@barrierridge.com](mailto:nhyde-whipp@barrierridge.com)

If to the Vendors at:

**Earth Boring Company Ltd.**

1775 N Sheridan Way  
Mississauga, ON

Attention: Eugene Woodbridge  
Email: [gene@earthboring.ca](mailto:gene@earthboring.ca)

and to:

**Reconstruct LLP**

80 Richmond Street West, Suite 1700  
Toronto, ON M5H 2A4

Attention: Caitlin Fell / Brendan Bissell  
Email: [cfell@reconllp.com](mailto:cfell@reconllp.com) / [bbisell@reconllp.com](mailto:bbisell@reconllp.com)

If to the Monitor at:

**BDO Canada Limited**  
20 Wellington St. East Suite 500  
Toronto ON M5E 1C5  
Canada

Attention: Heron Yin  
Email: [hyin@bdo.ca](mailto:hyin@bdo.ca)

and to:

**Gowling WLG**  
100 King St W  
Suite 1600  
Toronto, ON M5X 1G5  
Attention: Clifton P. Prophet / Heather Fisher  
Email: [clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com) / [heather.fisher@gowlingwlg.com](mailto:heather.fisher@gowlingwlg.com)

If to the Sales Advisor at:

**PricewaterhouseCoopers Corporate Finance Inc.**  
PwC Tower  
18 York Street  
Suite 2600  
Toronto, ON M5J 0B2

Attention: Eric Castonguay / Bryan Allsopp  
Email: [eric.castonguay@pwc.com](mailto:eric.castonguay@pwc.com) / [bryan.n.allsopp@pwc.com](mailto:bryan.n.allsopp@pwc.com)

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

### **11.8 Counterparts; Electronic Signatures**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution and delivery of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

***[Signature pages to follow]***

IN WITNESS HEREOF the Parties have executed this Agreement as of the date first written above.

**VENDORS:**

**EARTH BORING CO LIMITED**

Per: DocuSigned by:  
Eugene Woodbridge  
 Name: Eugene Woodbridge  
 Title: CEO

**YARBRIDGE HOLDINGS INC.**

Per: DocuSigned by:  
Eugene Woodbridge  
 Name: Eugene Woodbridge  
 Title: President

**TROLAN INVESTMENTS LTD.**

Per: DocuSigned by:  
Eugene Woodbridge  
 Name: Eugene Woodbridge  
 Title: President

**PURCHASER:**

**BARRIER RIDGE CAPITAL INC., on behalf of and in trust for a corporation to be incorporated**

Per: Signed by:  
Norm Hyde-Whipp  
 Name: Norm Hyde-Whipp  
 Title: President

**SCHEDULE 1.1(z)  
CLOSING SEQUENCE**

- (a) First, the Purchaser shall pay the Cash Consideration to the Monitor, to be held in escrow by the Monitor on behalf of the Purchaser;
- (b) Second, the Vendors shall be deemed to transfer to Residual Co. the Excluded Assets, the Excluded Contracts, the Excluded Liabilities, the Excluded Leases and all liabilities relating to the Terminated Employees pursuant to the Approval and Reverse Vesting Order;
- (c) Third, the Retained Assets will be retained by the applicable Vendors, in each case free and clear of and from any and all Claims and, for greater certainty, all of the Encumbrances, other than Permitted Encumbrances, affecting or relating to the Retained Assets will have been expunged and discharged as against the Retained Assets under the Approval and Reverse Vesting Order, and the Retained Liabilities will be retained by the applicable Vendors;
- (d) Fourth, all Prior Equity Interests of the Applicants (other than the Existing Shares which will be cancelled in accordance with the Articles of Reorganization) as well as any agreement, contracts, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of the Applicants shall be deemed terminated and cancelled for no consideration;
- (e) Fifth, the following shall occur concurrently with the sixth step below:
  - i. the Vendors shall issue the Purchased Shares to the Purchaser and the Purchaser shall subscribe for the Purchased Shares;
  - ii. the Cash Consideration will be released from escrow and made payable to the Monitor;
  - iii. the Vendors shall pay the Cure Costs to the applicable payees thereof; and
- (f) Sixth, the Articles of Reorganization will be filed and be effective.

**SCHEDULE 1.1(bb)  
CONTINUING PROJECT CONTRACTS**

| <b>Job#</b> | <b>Project Owner</b>         | <b>Customer</b>           | <b>Job Name</b>                                    |
|-------------|------------------------------|---------------------------|--|
| 21015       | Halton Region                | C&M McNally               | South Georgetown Wastewater Servicing              |
| 23010       | Town of Lincoln              | Town of Lincoln           | Lincoln Watermain                                  |
| 24019       | County of Simcoe             | Primrose                  | Simcoe County Rd 21                                |
| 23007       | Rose Corporation             | Clarose Midhurst GP Inc.  | Midhurst Heights                                   |
| 23011       | TTC                          | Bronte Construction       | Sheppard Station                                   |
| 24016       | County of Brant              | L82 Construction Ltd.     | Dundas Street East                                 |
| 24002       | Metrolinx                    | Clearway                  | PAPE   |
| 25004       | ENWIN                        | Amico Infrastructure Inc. | Enwin Feedermain Phase 2 Project                   |
| 23012       | Region of Peel               | Region of Peel            | Trenchless Crossing – Heart Lake, Elgin, Torbram   |
| 24001       | City of Hamilton             | City of Hamilton          | Garner Road Trunk SS                               |
| 255001      | Narraagansett Bay Commission | John Rocchio Corp         | Narragansett Bay Commission CSO Phase IIIA-4       |
| 25005       | CN                           | Dagmar Construction       | CN Track Detour Bala                               |
| 25007       | City of Hamilton             | RS Construction           | Culvert on Golf Links Drive                        |
| 25008       | City of Toronto              | Timbel Construction       | Boulton Dr, 7 <sup>th</sup> St, George St Grouting |
| 25009       | New Tecumseth                | Trisan Construction       | Bailey Creek Crossing                              |
| 25010       | District of Muskoka          | Trisan Construction       | Mountview PS                                       |
| 21039       | Region of Peel               | Aviva                     | Caledon FM Project                                 |
| 24003       | City of Guelph               | Goetz Construction        | Catherine St Rail Crossing                         |
| 23006       | Mansouri Group               | Mansouri Group            | Elgin Mills Sanitary                               |

**SCHEDULE 1.1(qq)  
EXCLUDED CONTRACTS**

| <b>Date of Contract</b>          | <b>Counterparty to the Contract</b>            |
|----------------------------------|--|
| June 29, 2023                    | 340268 Ontario Limited                         |
| August 1, 2022                   | Aggerton Capital Inc.                          |
| August 22, 2022                  | Mtbn Operators S.L                             |
| July 8, 2016                     | Servicemaster Contract Services<br>Mississauga |
| January 22, 2024-August 16, 2028 | Frew Energy Limited                            |
| November 2, 2021                 | 4 Drill Group Pawel Surdziel                   |
| August 10, 2023                  | 4DG Karolina Surdziel                          |

**SCHEDULE 1.1(rr)  
EXCLUDED LEASES**

**Real Property Lease**

1. Lease agreement between Earth Boring Co. Limited and Attridge Transportation Inc. dated October 1, 2014 for the premises municipally known as 1775 North Sheridan Way, Mississauga, Ontario.

**Vehicle Leases**

| <b>Counterparty to the Lease</b> | <b>Lease #</b> | <b>Description of Assets</b>                      |
|----------------------------------|----------------|---|
| CWB                              | 101015928191   | 2023 Vac Truck (Western Star)                     |
| KNL                              |                | SAL1L9FU1PA125175                                 |
| Element Fleet Finance Lease      | 2889133        | SALGS2E6NA466605                                  |
| KNL                              | 55531          | 2023 Ford F-150 Lightning)<br>(1FT6W1EV1PWG04182) |
| KNL                              | ST 056         | 2022 Ford F-150 (1FTFW1E51NFA81873)               |
| KNL                              | ST 057         | 2022 Ford F-150 (1FTFW1E82NFA81875)               |
| KNL                              | ST 059         | 2022 Ford F-150 (1FTFW1E88NFA91133)               |
| KNL                              | ST 058         | 2022 Ford F-150 (1FTFW1E80NFA81874)               |
| KNL                              | ST 072         | 2021 Ford F-150 (1FTFW1ED0MFB20216)               |
| KNL                              | ST 078         | 2023 Lincoln (5LMJJ3LG5PEL08251)                  |
| KNL                              | ST 062         | 2022 Ford Edge (2FMPK4G92NBA94310)                |
| KNL                              | ST 063         | 2022 Ford Edge (2FMPK4G98NBA94361)                |
| KNL                              | ST 064         | 2022 Ford Edge (2FMPK4G91NBA94475)                |
| KNL                              | ST 066         | 2022 Ford Edge (2FMPK4G98NBA94778)                |
| KNL                              | ST 067         | Loan - 2022 Ford Edge<br>(2FMPK4G99NBA94921)      |

|     |        |  |
|-----|--------|--|
| KNL | ST 070 | Loan - 2022 Ford Edge<br>(2FMPK4G93NBA94817) |
|-----|--------|--|

**SCHEDULE 1.1(fff)  
PERMITTED ENCUMBRANCES**

1. Any Encumbrances that secure the obligations under the Retained Leases; and
2. Mortgages registered in favour of Business Development Bank of Canada registered on title of the Real Properties.

**SCHEDULE 1.1(rrr)  
RETAINED CONTRACTS**

None – to be updated prior to Closing, as necessary.

**SCHEDULE 1.1(ttt)  
RETAINED LEASES**

***Equipment Leases***

| <b>Counterparty to the Lease</b> | <b>Lease/Loan #</b> | <b>Description of Assets</b>  |
|----------------------------------|---------------------|---|
| HSBC, as assumed by RBC          | 33062004            | Toro Horizontal Directional Drill and MTBM Navigating System (DD 034&VMT) |
| HSBC, as assumed by RBC          | 33062002            | New 2019 Westech Non-code Hydrovac mounted on 2019 Western Star Chassis   |
| HSBC, as assumed by RBC          | 33062007            | Two - new 2019 American Augers with Vandal Shield (48/54)                 |
| CWB                              | 101015106426        | 2019 AVN 1200TB S/N 24448   |
| RBC                              | 201000057361        | 2014 Liebherr Rotary Drill Rig and casing/attachments                     |
| Meridian OneCap                  | 704701              | 2016 CASE Wheel Loader & 2015 Kobelco Excavator                           |
| CWB                              | 101015440587        | Various equipment   |
| BMO                              | 39453               | Herrenknecht 2017 Micro Tunneling System                                  |
| BMO                              | 39504               | 2011 Link Belt HTC86100 Crane   |

***Real Property Leases***

1. Intercompany lease for the property municipally known as 960 Zelco Drive, Burlington, Ontario with Yarbridge Holdings Inc.
2. Intercompany lease for the property municipally known as 75 Steelwell Road, Brampton, Ontario with Trolan Investments Ltd.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
EARTH BORING CO. LIMITED ET AL.

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

Proceedings commenced at Toronto

**AFFIDAVIT OF EUGENE WOODBRIDGE  
(Sworn September 3, 2025)**

**RECONSTRUCT LLP**  
80 Richmond Street West  
Toronto, ON M5H 2A4

**Caitlin Fell** LSO No. 60091H  
[cfell@reconllp.com](mailto:cfell@reconllp.com)  
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Tel: 416.613.0066

**Jessica Wuthmann** LSO No. 72442W  
[jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com)  
Tel: 416.613.8288

**Lawyers for the Applicants**

**TAB 3**

Court File No. CV-25-00741419-00CL

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

|                     |   |                                |
|---------------------|---|--------------------------------|
| THE HONOURABLE      | ) | THURSDAY, THE 11 <sup>TH</sup> |
|                     | ) | DAY OF SEPTEMBER, 2025         |
| JUSTICE J. DIETRICH | ) |                                |

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED (individually, an "**Applicant**" and collectively, the "**Applicants**")

**APPROVAL AND REVERSE VESTING ORDER**

**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Share Subscription Agreement between Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd., as vendors (collectively, the "**Vendors**" and "**Vendor**" means any one of them), and Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated, as purchaser (the "**Purchaser**") dated September 3, 2025 (the "**Subscription Agreement**"), a copy of which is appended as Confidential Exhibit "1" to the Affidavit of Eugene Woodbridge sworn September 3, 2025 (the "**Woodbridge Affidavit**"), and approving the transactions contemplated by the Subscription Agreement (the "**Transactions**"); (ii) adding 1001343933 Ontario Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings; (iii) transferring and vesting all of the Applicants' right, title and interest in and to the Excluded Assets and the Excluded Liabilities (each as defined herein) in and to ResidualCo; (iv) authorizing and directing the Vendors to file the Articles of Reorganization (as defined herein) (if determined necessary by the Purchaser); (v) vesting all of the right, title and interest in and to the Purchased Shares (as defined herein) in the Purchaser; and (vi) extending the stay of proceedings, was heard this day by judicial videoconference.

**ON READING** the Motion Record of the Applicants, including the Woodbridge Affidavit and the Exhibits thereto, and the Fourth Report of BDO Canada Limited ("**BDO**") as monitor of the Applicants (in such capacity, the "**Monitor**") dated September ●, 2025 (the "**Fourth Report**"),

and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Purchaser, counsel to Bank of Montreal (“**BMO**”), the Applicants’ senior secured lender, and such other counsel as were present, no one appearing for any other person although duly served as appears from the affidavit of service of ● sworn September ●, 2025, as filed,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record of the Applicants dated September ●, 2025 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meanings given to them in the Subscription Agreement or, if not defined therein, the Order of Justice Cavanagh dated May 28, 2025, as amended and restated from time to time (the “**TARIO**”).

## **APPROVAL AND VESTING**

3. **THIS COURT ORDERS** that the Subscription Agreement and the Transactions be and are hereby approved, and the execution of the Subscription Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors and the Purchaser may deem necessary or otherwise agree to with the approval of the Monitor. The Applicants are hereby authorized and directed to perform their obligations under the Subscription Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions, including without limitation, the redemption and cancellation of all Existing Shares in the Vendors for no consideration, the filing of the Articles of Reorganization if determined necessary by the Purchaser, and the issuance of the Purchased Shares to the Purchaser.

4. **THIS COURT ORDERS** that notwithstanding any provision hereof, the closing of the Transactions shall be deemed to occur in the manner, order and sequence set out in the Subscription Agreement, including in accordance with the Closing Sequence, with such alterations, changes or amendments as may be agreed to by the Purchaser and the Applicants, with the consent of the Monitor, provided that such alterations, changes or amendments do not materially alter or impact the Transactions or the consideration which the Applicants and/or its applicable stakeholders will benefit from as part of the Transactions.

5. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transactions, and that no shareholder, director, or other approval shall be required in connection therewith.

6. **THIS COURT ORDERS** that, upon the delivery of a certificate of the Monitor substantially in the form attached as **Schedule “A”** hereto (the **“Monitor’s Closing Certificate”**) to the Purchaser and the Vendors (the **“Closing Time”**), the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

- (a) first, all of the Vendors’ right, title and interest in and to the Excluded Assets and Excluded Liabilities shall vest absolutely and exclusively in ResidualCo, with all applicable debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **“Claims”**), including without limiting the generality of the foregoing,
  - (i) all Claims in respect of work or services performed by the Vendors on the Continuing Project Contracts prior to the Filing Date, and
  - (ii) any encumbrances or charges created by the TARIO or any other Order of the Court in the CCAA proceedings;
  - (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; (all of which are collectively referred to as the **“Encumbrances”**, which term shall not include the Permitted Encumbrances listed on **Schedule “B”** hereto) shall continue to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 10 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer.

- (b) second, all of the Excluded Assets and the Excluded Liabilities shall become obligations and assets of ResidualCo and shall no longer be obligations or assets of the Vendors and all of the Vendors' respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Vendors (the "**Vendors' Property**"), shall be and are hereby forever released and discharged from such Excluded Assets and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Vendors' Property are to be expunged and discharged as against the Vendors' Property;
- (c) third, the Retained Liabilities and the Retained Assets shall be retained by the applicable Vendors, and in the case of the Retained Assets, free and clear of and from any and all Claims and, for greater certainty, all of the Encumbrances, other than Permitted Encumbrances, affecting or relating to the Retained Assets will have been expunged and discharged as against the Retained Assets under this Order, and the Retained Liabilities will be retained by the applicable Vendors;
- (d) fourth, all Prior Equity Interests of the Vendors (other than the Existing Shares which will be cancelled in accordance with the Articles of Reorganization) as well as any agreement, contracts, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of the Applicants shall be deemed terminated and cancelled for no consideration and the only equity interests in the Applicants that shall remain issued and outstanding after the date hereof shall be the Purchased Shares;
- (e) fifth, the following shall occur concurrently:
  - (i) the Vendors shall issue the Purchased Shares to the Purchaser, and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser; and
  - (ii) the Articles of Reorganization shall be filed or deemed to be filed if determined necessary by the Purchaser; and
- (f) sixth, the Vendors shall be deemed to cease being Applicants in these CCAA proceedings and the Vendors shall be deemed to be released from the purview of the TARIO and all other orders of this Court granted in respect of these CCAA

proceedings, save and except for this Order, the provisions of which (as they relate to the Applicants) shall continue to apply in all respects.

7. **THIS COURT AUTHORIZES AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate forthwith after the Closing Time.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendors and the Purchaser and their counsel regarding the satisfaction or waiver of the conditions to closing under the Subscription Agreement and shall have no liability with respect to the delivery and filing of the Monitor's Closing Certificate.

9. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Vendors or the Vendors' Property, business or operations (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of a copy of the Monitor's Closing Certificate and a copy of this Order as though they were originals and to enter into records, make, amend or discharge such registrations and transfers of interests as the Purchaser, the Vendors, ResidualCo or the Monitor may require to give effect to the terms of this Order and the Subscription Agreement. Presentment of a copy of this Order and a copy of the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to enter into records, make, amend or discharge registrations and transfers of interests as required by this paragraph, including, without limitation, to effect the discharge of the Claims and Encumbrances as against the Applicants.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares (including, for greater certainty, the Cash Consideration) (the "**Proceeds**") shall stand in the place and stead of the Vendors' Property, and that from and after the delivery of the Monitor's Closing Certificate, all Claims and Encumbrances shall attach to the Proceeds and the Excluded Assets with the same priority as they had with respect to the Vendors' Property immediately prior to the Transactions as if the Transactions had not occurred.

11. **THIS COURT ORDERS** that the Retained Leases and Retained Contracts shall remain in full force and effect upon and following the Closing Time, and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such Retained Contracts or Retained Leases may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its

obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such contract, and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the Applicants);
- (b) the insolvency of any of the Applicants or the fact that the Applicants obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Subscription Agreement, the Transactions, the provisions of this Order, or any other order of the Court in these CCAA proceedings; or
- (d) any transfer or assignment, or any change of control of any of the Vendors arising from the implementation of the Subscription Agreement, the Transactions, or the provisions of this Order.

12. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 11 hereof shall waive, compromise or discharge any obligations of the Vendors or the Purchaser in respect of any Retained Liabilities; and (b) nothing in this Order or the Subscription Agreement shall affect or waive the Vendors' or the Purchaser's rights and defences, both legal and equitable, with respect to any Retained Liabilities, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liabilities.

13. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all breaches and/or defaults of any of the Vendors then existing or previously committed by any of the Vendors, or caused by any one of the Vendors, directly or indirectly, as well as any non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Retained Contracts or Retained Leases arising directly or indirectly from the filing by the Vendors under the CCAA or the implementation of the Transactions, including without limitation any of the matters or events listed in paragraphs 6 and 11 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Retained Contract or Retained Lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of

the Vendors or the Purchaser from performing their obligations under the Subscription Agreement or be a waiver of defaults by any of the Vendors or the Purchaser under the Subscription Agreement and the related documents.

14. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, indirectly, derivatively or otherwise, and including without limitation administrative or tribunal hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Vendors or the Purchaser relating in any way to or in respect of any Excluded Assets or Excluded Liabilities, and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

15. **THIS COURT ORDERS** that, from and after the Closing Time:

- (a) the nature of the Retained Liabilities retained by the Vendors, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;
- (c) any Person that prior to the Closing Time had a valid right or claim against the Vendors under or in respect of any Excluded Assets or Excluded Liabilities, (each, an “**Excluded Liability Claim**”) shall no longer have an Excluded Liability Claim against the Vendors but will have an equivalent Excluded Liability Claim as against ResidualCo in respect of the Excluded Assets or Excluded Liabilities, from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and
- (d) any Person with an Excluded Liability Claim against ResidualCo following the Closing Time shall have the same rights, priority and entitlement as against ResidualCo as such Person had against the Applicants in respect of that Excluded Liability Claim prior to the Closing Time.

16. **THIS COURT ORDERS** that, from and after the Closing Time:

- (a) ResidualCo shall be a company to which the CCAA applies; and

- (b) ResidualCo shall be added as an Applicant in these CCAA proceedings and all references in any order of this Court in respect of these CCAA proceedings (except the herein order) to (i) an “Applicant” or the “Applicants” shall refer to and include ResidualCo and (ii) “Property” shall include all present and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of ResidualCo, and, for greater certainty, each of the CCAA Charges shall constitute a charge on the property of ResidualCo.

17. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to:

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1001343933 ONTARIO INC.

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

- (a) the pendency of these CCAA proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of the Applicants or ResidualCo and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants or ResidualCo; and
- (d) the provisions of any applicable legislation,

the Subscription Agreement, the implementation and consummation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets and Excluded Contracts in and to ResidualCo, the redemption and cancellation of all Existing Shares in the Vendors for no consideration, the issuance, transfer and vesting of the Purchased Shares in and to the Purchaser), shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or ResidualCo and shall not be void or voidable by creditors of the Applicants or ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial

legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

## **LIENS**

19. **THIS COURT ORDERS** that no Person shall be permitted to preserve or perfect a Lien Claim (as defined in the Lien Regularization Order dated April 17, 2025 (the “**LRO**”)) under the *Construction Act* on any Continuing Project Contracts in respect to services or work performed by the Vendors prior to the Filing Date (“**Pre-Filing Lien Claims**”), and that any such Pre-Filing Lien Claims be and are hereby vacated and shall only be entitled to seek recovery on account of any Pre-Filing Lien Claims by way of a claim on the Lien Charge pursuant to and in accordance with the terms of the LRO and any other Order granted by the Court.

## **EXTENSION OF STAY PERIOD**

20. **THIS COURT ORDERS** that the Stay Period, as defined in the TARIO, is hereby extended until and including October 31, 2025.

## **THE MONITOR**

21. **THIS COURT ORDERS** that, upon the Closing Time, in addition to the powers and duties of the Monitor set out in the TARIO or any other Order of this Court granted in this CCAA proceeding, the Monitor be and is hereby authorized and empowered, but not required, to:

- a) cause ResidualCo to take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, ResidualCo, contemplated to be taken or executed by ResidualCo pursuant to or in connection with the Subscription Agreement or the Transactions contemplated thereby (or as otherwise may be considered necessary or desirable in connection therewith) or any Order of this Court;
- b) exercise any powers which may be properly exercised by any board of directors of ResidualCo;
- c) open one or more new accounts in the name of the Monitor for and on behalf of ResidualCo (the “**ResidualCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo may be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo, the ResidualCo Accounts in

such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties;

- d) cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo, the distribution of the proceeds of ResidualCo's property, or any other related activities, including in connection with bringing this CCAA proceeding to an end;
- e) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo (including any governmental authority) in the name of or on behalf of ResidualCo;
- f) claim or cause ResidualCo to claim any and all insurance refunds or tax refunds to which ResidualCo is entitled; and
- g) assign ResidualCo, or cause ResidualCo to be assigned, into bankruptcy, and the Monitor shall hereby be entitled but not obligated to act as a trustee of ResidualCo in any such bankruptcy.

22. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the Applicants or ResidualCo, or any part thereof; or (b) be deemed to be in Possession (as defined in the TARIO) of any property of the Applicants or ResidualCo within the meaning of any applicable Environmental Legislation (as defined in the TARIO) or otherwise.

23. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives are not and shall not be or be deemed to be, a director, officer, or employee of ResidualCo, *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order.

24. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of ResidualCo.

25. **THIS COURT ORDERS** that the Fourth Report of the Monitor and the activities of the Monitor as set out therein are hereby approved provided, however, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

26. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel as set out in the Fourth Report be and are hereby approved.

#### **PRE-FILING RELEASES**

27. **THIS COURT ORDERS** that, effective upon the Closing Time, the current directors and officers of the Applicants (collectively, the “**Released D&Os**” and each a “**Released D&O**”) shall be and are hereby forever irrevocably released and discharged from any and all claims, that any Person may have or be entitled to assert against the Released D&Os now or hereafter, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based on statute or otherwise, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to commencement of these CCAA proceedings in respect of the Applicants, the business, operations, assets, property and affairs of the Applicants and/or these CCAA proceedings (collectively, the “**D&O Released Claims**”), and any such D&O Released Claims are hereby irrevocably and permanently released, discharged, stayed, extinguished and forever barred, and the Released D&Os shall have no liability in respect thereof; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar any claim or liability (a) arising out of any gross negligence or willful misconduct on the part of the applicable Released D&O; (b) that is not permitted to be released pursuant to section 5.1(2) of the CCAA; and (c) the liabilities and obligations of Eugene Woodbridge with respect to the agreement between Eugene Woodbridge and BMO dated ●, 2025. For greater certainty, “current” in this paragraph refers to individuals who remain in their respective role(s) up to one day prior to closing of the Transactions, as applicable.

#### **POST-FILING RELEASES**

28. **THIS COURT ORDERS** that, effective upon the Closing Time, (a) the current directors, and officers, legal counsel and advisors of the Applicants; (b) the current directors, officers, shareholders, consultants, legal counsel and advisors to ResidualCo; (c) the Purchaser and its legal counsel and their respective affiliates, directors, officers, partners, employees, and advisors; and (d) the Monitor and its legal counsel (the Persons listed in (a), (b), (c) and (d) being collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, duties, recoveries, and obligations of any nature or kind

whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) arising in connection with or relating to these CCAA proceedings, the Subscription Agreement, the consummation of the Transactions, and/or any closing document, agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing (collectively, the “**Released Claims**”), which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, and are not vested nor transferred to ResidualCo or to any other entity and are extinguished, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for fraud or willful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or any obligations of the Released Parties under, or in connection with, the Subscription Agreement. For greater certainty, “current” in this paragraph refers to individuals who remain in their respective role(s) up to one day prior to closing of the Transactions.

## **DISTRIBUTION**

29. **THIS COURT ORDERS** that, upon receipt of funds by the Monitor in accordance with section 7.2(i) of the Subscription Agreement (the “**BMO Lease Funds**”), the Monitor is hereby authorized, directed and empowered to make one or more cash distributions to BMO of the BMO Lease Funds, up to the total claims of BMO under the BMO Leases (the “**BMO Lease Distribution**”), or to direct payment of the BMO Lease Funds directly to BMO.

30. **THIS COURT ORDERS** that neither the Monitor nor the Applicants shall incur any liability as a result of making the Retained Lease Funds Distribution or as a result of any step taken to complete the Retained Lease Fund Distribution as authorized by this Order.

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

- (a) the pendency of this CCAA proceeding;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of ResidualCo and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants or ResidualCo; or

- (d) the provisions of any federal or provincial legislation;

any distribution made pursuant to this Order is final and irreversible and shall be binding upon any trustee in bankruptcy that may be appointed in respect of the Applicants or ResidualCo, and shall not be void or voidable by creditors of the Applicants or ResidualCo, nor shall any such distribution constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer-at-undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial law, nor shall it constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicants or ResidualCo.

### **SEALING**

32. **THIS COURT ORDERS** that the Confidential Exhibit to the Woodbridge Affidavit and the Confidential Appendix to the Fourth Report of the Monitor are sealed until the earlier of the closing of the Transactions or further order of this Court.

### **BANKRUPTCY MATTERS**

33. **THIS COURT ORDERS** that the Stay provided for at paragraphs 15-17 of the TARIO, be and is hereby lifted solely for the purpose of allowing the Applicant to make an assignment in bankruptcy pursuant to the BIA.

34. **THIS COURT ORDERS** that the Applicants are authorized to make an assignment in bankruptcy pursuant to the BIA in the City of Toronto, Province of Ontario, naming BDO as the bankruptcy trustee (in such capacity, the “**Bankruptcy Trustee**”), and, in that regard, the director of the Applicants is authorized to sign such documents in the name of the Applicants and take all such steps as are necessary to make the assignment in bankruptcy and commence proceedings under the BIA (the “**BIA Proceedings**”).

### **TERMINATION RESERVE**

35. **THIS COURT ORDERS** that the Monitor shall be authorized to retain a termination reserve in the amount of \$● (the “**Termination Reserve**”) to fund the remainder of these CCAA Proceedings and, if applicable, the subsequent BIA Proceedings of the Applicants. If at any time prior to making the BIA Proceedings the Monitor determines that not all of the Termination Reserve is required, the Monitor may, in its sole discretion, return a portion of the Termination Reserve to the general pool of funds to be used for distribution in these CCAA Proceedings. Any unused portion of the Termination Reserve after payment or reservation for all costs associated

with the Termination Reserve, shall be transferred by the Monitor and/or the Bankruptcy Trustee to the Purchaser.

## **GENERAL**

36. **THIS COURT ORDERS** that, following the Closing Time, the Purchaser shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances in respect of Excluded Assets or Excluded Liabilities as against the Applicants, Retained Assets and the Purchased Shares.

37. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

39. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are 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.

40. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order without any need for entry and filing.

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**Schedule “A” – Form of Monitor’s Closing Certificate**

Court File No. CV-25-00741419-00CL

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

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH BORING CO. LIMITED, YARBRIDGE HOLDINGS INC., TROLAN INVESTMENTS LTD., AND YARFIELD SERVICES LIMITED (individually, an “**Applicant**” and collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE****RECITALS**

A. Pursuant to an Initial Order of the Ontario Superior Court of Justice (the “**Court**”) dated April 17, 2025 (the “**Initial Order**”), the Applicants were granted creditor protection pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and BDO Canada Limited was appointed as Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”).

B. Pursuant to an Order of the Court dated September 11, 2025 (the “**Approval and Reverse Vesting Order**”), the Court, *inter alia*, (i) approved the Share Subscription Agreement between Earth Boring Co. Limited, Yarbridge Holdings Inc., and Trolan Investments Ltd, as vendors (collectively, the “**Vendors**”), and Barrier Ridge Capital Inc., on behalf of and in trust for a corporation to be incorporated, as purchaser dated September 3, 2025 (the “**Subscription Agreement**”); (ii) approved the transactions contemplated by the Subscription Agreement; (iii) added 1001343933 Ontario Inc. (“**ResidualCo**”) as an Applicant to these CCAA proceedings; (iv) vested all of the Vendors’ right, title and interest in and to the Excluded Assets and the Excluded Liabilities in and to ResidualCo; (v) authorized and directed the Vendors to file the Articles of Reorganization (if determined necessary by the Purchaser); and (vi) vested all of the right, title and interest in and to the Purchased Shares in the Purchaser.

C. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Approval and Reverse Vesting Order or, if not defined therein, the Subscription Agreement.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from the Vendors and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing set out in the Subscription Agreement have been satisfied or waived by the Purchaser or Vendors, as applicable; and
2. The Purchaser has paid to the satisfaction of the Monitor the Cash Consideration and the Cure Costs for the Retained Leases and the Retained Contracts.

This Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_.

**BDO Canada Limited in its capacity as  
Monitor of the Applicants, and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule “B” – Permitted Encumbrances**

1. Any Encumbrances that secure obligations under the Retained Leases; and
2. Mortgages registered in favour of Business Development Bank of Canada registered on title of the Real Properties.

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,  
c.C-36 AS AMENDED

Court File No. CV-25-00741419-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EARTH  
BORING CO. LIMITED ET AL.

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

Proceedings commenced at Toronto

**APPROVAL AND REVERSE VESTING ORDER**

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**Lawyers for the Applicants**

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c.C-36 AS AMENDED

Court File No. CV-25-00741419-00CL

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

Proceedings commenced at TORONTO

**MOTION RECORD OF THE APPLICANTS  
(Returnable September 11, 2025)**

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