

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(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 JMX CONTRACTING INC., JMX
NATIONAL INC., BRND PROPERTIES INC., and JMX LEASING
INC. (the "Applicants")

MOTION RECORD

December 3, 2020

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TO: THE SERVICE LIST

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TAB 1

Court File No. CV-20-00648528-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES
INC., and JMX LEASING INC. (the "Applicants")**

**NOTICE OF MOTION
(Re: Stay Extension)**

**JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES INC.,
and JMX LEASING INC.** (collectively, the "**Applicants**") will make a motion to a Judge presiding over the Commercial List on Tuesday, December 8, at 10:00 a.m., or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Christel Paul at cpaul@wfkllaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of the Motion Record (the “**Stay Extension Order**”) that, among other things:
 - a) extends the Stay Period as defined in paragraph 16 of the initial order of Justice Hainey dated September 29, 2020 (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) by 90 days, up to and including March 8, 2021;
 - b) extends the Closing Date Deadline as defined in Schedule A to the Initial Order up to and including January 31, 2020;
 - c) approving the reports, activities and fees of Crowe Soberman Inc. in its capacities as proposal trustee (“**Proposal Trustee**”) and monitor (the “**Monitor**”) of the Applicants, as well as the fees of its counsel.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. The Applicants are a part of a corporate group (the “**JMX Group**”) in the business of providing environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning projects across Canada.
2. On September 29, 2020, the Initial Order granted by Hainey J., among other things:
 - a) granted a stay of proceedings up to and including December 11, 2020 (the “**Stay Period**”);

- b) appointed Crowe Soberman Inc. as Monitor;
 - c) approved an asset purchase agreement (the “**Stalking Horse Bid**”) submitted by 2779076 Ontario Inc. (“**277**” or the “**Stalking Horse**”); and
 - d) approved a Stalking Horse sale process for the marketing and sale of the assets of the Applicants whereby interested parties were required to submit bids by 5:00 p.m. on October 23, 2020 (the “**Phase I Bid Deadline**”).
3. Notwithstanding the Monitor and Applicants’ efforts, no bids were received by the Phase I Bid Deadline.
4. The Applicants have worked diligently and in good faith during the restructuring period. Since the Initial Order was granted, the JMX Group’s management, together with the Monitor and company counsel have, among other things:
- a) provided information to the Monitor to facilitate the sale process;
 - b) worked with the Monitor to address cash flows;
 - c) operated in accordance with the Initial Order, including conducting business in the normal course and seeking out new profitable contracts;
 - d) engaged with key stakeholders such as RBC to, among other things, pay down the RBC indebtedness from cash flow; and
 - e) pursued a transaction with the Stalking Horse and intend to seek court approval of a transaction giving effect to the asset purchase transaction (the “**Transaction**”).

5. The Applicants are focused now on the closing of the Transaction. 277 has requested that the Applicants and Monitor consider a reverse vesting transaction as an alternative to the asset purchase transaction contemplated in the Stalking Horse Bid to achieve cost savings and efficiencies and to minimize disruptions to the Applicants' business. Among other things, the Applicants and 277 seek to avoid any disruption to the business that could occur as a result of the assignment of the Applicants' active contracts, and the fees and taxes associated with the transfer of real property assets and the Applicants' existing mortgage obligations.
6. Accordingly, the Applicants and 277 are exploring the possibility of structuring the transaction as a reverse vesting transaction. Absent a reverse vesting transaction structure acceptable to the Applicant and Monitor, or if the proposed transaction structure is not approved by this Court, it is the Applicants' intention to seek approval of the asset purchase transaction contemplated in the Stalking Horse Bid.

Extension of the Stay Period

7. The extension of the Stay Period is necessary and appropriate. The Applicants are seeking an extension of the stay of proceedings up to and including March 8, 2021 to provide the time necessary to settle the reverse vesting structure, seek this Court's approval, and close the Transaction.
8. The proposed Transaction will benefit all stakeholders of the Applicants. The proposed Transaction is preferable to the bankruptcy and liquidation which would occur if the Stay Period were not extended.

9. Pursuant to the terms of the Stalking Horse Bid, the Applicants' going concern business will continue under 277 without disruption to counterparties to the Applicants' construction contract and the employment of approximately 45 employees will be preserved.
10. Further, the Stalking Horse Bid contemplates trade creditors will have their liabilities assumed by 277 and paid in the normal course. 277 has also agreed to fund litigation of the Applicants' claims against Ontario Power Generation Inc. and ASNA Robson Landmark Holdings Limited for the recovery of proceeds for the benefit of creditors with claims related to those projects.
11. The Applicants have acted in good faith and with due diligence since the granting of the Initial Order.
12. The Monitor supports the relief sought.

Further Grounds

13. Section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
14. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

16. The Affidavit of Charlie Dahl, sworn December 3, 2020, with Exhibits attached thereto;

17. The First Report of the Monitor, to be filed; and
18. Such further and other evidence as counsel may advise and this Honourable Court may permit.

December 3, 2020

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TO: THE SERVICE LIST

Schedule "A"
Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/84769303108>

Meeting ID: 847 6930 3108

One tap mobile

+15873281099,,84769303108# Canada

+16473744685,,84769303108# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington D.C)

Meeting ID: 847 6930 3108

Find your local number: <https://us02web.zoom.us/u/kba2woVlg>

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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Proceedings commenced at Toronto

NOTICE OF MOTION

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TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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and JMX LEASING INC. (the “Applicants”)

AFFIDAVIT OF CHARLIE DAHL
(Sworn December 3, 2020)

I, **CHARLIE DAHL**, of the town of Stouffville, in the province of Ontario, **MAKE OATH AND SAY:**

1. I am a director of each of the applicants, JMX Contracting Inc., JMX National Inc., BRND Properties Inc., and JMX Leasing Inc. (collectively, the “**Applicants**” or each an “**Applicant**”). I am also the Chief Executive Officer of the Applicant JMX Contracting Inc. (“**JMX Contracting**”). 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. On September 29, 2020, the Honourable Mr. Justice Hainey granted an order (the “**Initial Order**”) that, among other things:

(a) granted a stay of proceedings up to and including December 11, 2020 (the “**Stay Period**”);

(b) appointed Crowe Soberman Inc. as the court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”);

- (c) approved an asset purchase agreement (the “**Stalking Horse Bid**”) submitted by 2779076 Ontario Inc. (“**277**” or the “**Stalking Horse**”); and
 - (d) approved a stalking horse sale process for the marketing and sale of the assets of the Applicants (the “**Sale Process**”) whereby interested parties were required to submit bids by 5:00 p.m. on October 23, 2020 (the “**Phase I Bid Deadline**”). The deadline has lapsed and no bids have been received by the Monitor.
3. The Applicants are currently pursuing a transaction with the Stalking Horse (the “**Transaction**”). However, the Applicants are not currently in a position to put forth the Transaction for approval as the Applicants and 277 are considering utilizing a reverse vesting structure to effect the Transaction, which structure would minimize costs and disruptions to the business. Accordingly, the Applicants require additional time in CCAA protection to finalize and consummate the Transaction.
4. This Affidavit is sworn in support of a motion for an order:
- (a) extending the Stay Period (as defined in the Initial Order) for 90 days up to and including March 8, 2021;
 - (b) extending the Closing Date Deadline (as defined in Schedule A to the Initial Order) up to and including January 31, 2021; and
 - (c) approving the reports, activities and fees of Crowe Soberman Inc. in its capacities as proposal trustee and Monitor, as well as the fees of its counsel.

I. ACTIVITIES OF THE APPLICANTS SINCE THE INITIAL ORDER

5. Since the granting of the Initial Order on September 29, 2020, the Applicants have taken various steps to advance their restructuring goals, including a sales process conducted by the Monitor to solicit offers for the assets of the Applicants.

Marketing and Sales Process

6. On September 29, 2020, the Court approved a Sale Process that provided for a two-stage sale process and a Stalking Horse Bid. The purpose of the Sale Process was to solicit offers for the purchase of the property, assets and undertaking of the Applicants on a going concern basis on terms that were superior to the Stalking Horse Bid.

7. Immediately after the granting of the Initial Order, the Monitor commenced a marketing and sales process in accordance with the Initial Order. I was involved in the sale process on behalf of the Applicants and provided information to the Monitor when requested.

8. Notwithstanding the Monitor's efforts, with the Applicants' assistance, no bids were received by the Phase I deadline on October 23, 2020. Pursuant to the Sale Process, if the Monitor, after consultation with the Applicants determined that no Qualified Phase I Bid (as defined in the Initial Order) had been received other than the Stalking Horse Bid, the Monitor was authorized to terminate the Sale Process, in which case the Stalking Horse Bid would be deemed to be a Successful Bid (as defined in the Initial Order).

9. The Stalking Horse Bid submitted by 277 provides for, among other things:

- (a) the purchase of substantially all of the assets of the JMX Group other than the OPG Contract and the ASNA Contract, each as defined below, and the assumption of

substantially all of liabilities of the JMX Group, other than the Remaining Liabilities (defined below);

(b) the liabilities with respect to the OPG Contract and the ASNA Contract (including in both cases, amounts owed to subcontractors that worked on these projects) constitute excluded liabilities (the “**Remaining Liabilities**”);

(c) a purchase price comprised of the aggregate of:

- (i) the payment in cash, or the assumption of any payables of the Applicants, which by operation of law, are in priority to the security interest of RBC;
- (ii) the assumption of the secured indebtedness owing by the Applicants, if any, to RBC;
- (iii) the assumption of the DIP Loan in the amount of \$1,000,000 (described below) plus any accrued interest owing by the Applicants to the DIP Lenders;
- (iv) the assumption of certain ordinary course trade liabilities of the Applicants, amounting to approximately \$4 million (this amount includes the indebtedness owing by the Applicants to JMX Environmental);
- (v) the assumption of the mortgage granted to BRND by Hillmount Capital Inc. (“**Hillmount**”) in the amount of approximately \$1.7 million;
- (vi) the assumption of the indebtedness owing by BRND to Dahl Demolition Corp., 23912112 Ontario Inc., and 2391213 Ontario Inc. amounting to approximately \$1.2 million; and

- (vii) the amount of funds necessary to fund the costs associated with the OPG Litigation;
- (d) in respect to the Remaining Liabilities in connection with OPG (the “**OPG Remaining Liabilities**”), 277 will fund the costs associated with the OPG Litigation and any amounts recovered in respect to that litigation less the costs of the litigation will be distributed to holders of the OPG Remaining Liabilities on the basis of their legal entitlements;
- (e) in respect to the Remaining Liabilities in connection with ASNA (the “**ASNA Remaining Liabilities**”), 277 will fund continue to fund the litigation against ASNA. Any amounts recovered in respect to that litigation less the costs of the litigation will be paid to holders of the ASNA Remaining Liabilities on the basis of their legal entitlements.
10. 277 has agreed to pay out the remaining credit line and Visa amounts owing by the Applicants to RBC by January 31, 2021 to the extent that these amounts are still outstanding at the time of closing.
11. The Stalking Horse, 277, is an Ontario corporation held in equal share by Matt Richards and Peter Bensley. While Mr. Richards and Mr. Bensley hold equity in the Applicants through their corporations and are themselves Directors of the Applicants, 277 is not related to the Applicants. To ensure the integrity of the Sale Process, Mr. Richards and Mr. Bensley were not entitled to participate in the sale process on behalf of the Applicants nor receive any information about the sale process due to their affiliation with 277.

12. The Applicants are focused now on closing the Transaction. 277 has requested that the Applicants and Monitor consider a reverse vesting transaction as an alternative to the asset purchase transaction contemplated in the Stalking Horse Bid.

13. I am advised by my counsel that Courts have approved reverse vesting orders that permit debtors to retain assets and vest out liabilities to effect a sale of a business. I understand that a reverse vesting structure, if approved, would result in efficiencies and cost savings to the Applicants and 277.

14. Accordingly, the Applicants and 277 are exploring the possibility of structuring the transaction as a reverse vesting transaction to, among other things, minimize the business disruption that would occur if contracts had to be assigned to 277, avoid fees that would be payable on the Hillmount mortgage in an asset sale, and to minimize any taxes that may be payable in respect of the transfer of the Applicants' real property.

15. Absent a reverse vesting transaction structure acceptable to the Applicant and Monitor, or if the proposed transaction structure is not approved by this Court, it is the Applicants' intention to seek approval of the asset purchase transaction contemplated in the Stalking Horse Bid.

16. The Applicants will require some additional time beyond the timelines provided for in the Sale Process to structure a potential reverse vesting transaction, seek Court approval, and close the transaction. Pursuant to the Sale Process, the Monitor may extend or amend the Sale Process timetable by up to two weeks without Court approval. As the extension sought is longer than that which the Monitor may approve, the Applicants are seeking this Court's approval of a revised timetable for closing to permit the Transaction to close by January 31, 2021.

17. The outside date of January 31, 2021 will permit the Applicant's corporate counsel reasonable time to resolve the proposed transaction structure, settle any transaction documents and make any corporate filings necessary to effect the Transaction given the intervening holiday period in December.

18. Since the Initial Order was granted, the Applicants have continued to, among other things:

- (a) operate in accordance with the Initial Order, including conducting business in the normal course and seeking out new profitable contracts;
- (b) work with the Monitor to address cash flows; and
- (c) engage with key stakeholders such as RBC to, among other things, pay down the RBC indebtedness from cash flow.

Payments to the Secured Creditor

19. As at the date of the NOI filing, the JMX Group's total indebtedness to RBC was approximately \$4.43 million. As at the date of this affidavit, JMX Contracting Inc. has paid down substantially all of its secured debt to RBC and no obligations remain outstanding other than a Visa credit facility and an amount on account of RBC's legal fees. I expect JMX Contracting Inc.'s obligations to RBC will be paid in full on or prior to the Transaction closing.

20. Pursuant to the Transaction, it is expected that JMX Leasing Inc.'s obligations to RBC in respect of various equipment financing arrangements will be assumed by 277 (or will remain with the restructured company in the context of a reverse vesting transaction) and will be serviced in the normal course post-closing. In the meantime, normal course debt service payments will continue to be made in accordance with the Applicants' cash flows during the pendency of these CCAA proceedings. RBC

continues to be fully secured as the appraised asset value of the Applicants far exceeds the amount of outstanding indebtedness to RBC.

Status of Litigation Over Disputed Contracts

21. As I have discussed in prior affidavits sworn in the CCAA an NOI proceedings, the Applicants are engaged in disputes related to two pre-filing demolition projects with Ontario Power Generation Inc. (“**OPG**”) and with ASNA Robson Landmark Developments Limited (“**ASNA**”). The Applicants continue to pursue the receivables under each contract and it appears litigation will be necessary to resolve the disputes.

Ontario Power Generation Inc.

22. Pursuant to a contract dated July 10, 2018 (the “**OPG Contract**”) Contract, JMX provided demolition and scrap removal services to the OPG Lambton Generating Station project. On August 31, 2020 OPG brought a motion before this Court to lift the stay of proceedings to terminate the OPG Contract to permit it to enter into a contract with another party for the completion of the project. On September 25, 2020, JMX and the Monitor consented to lifting the stay without prejudice to JMX’s rights to assert any remedies available to it at law and pursuant to the OPG Contract. Accordingly, OPG has now terminated the OPG Contract.

23. Pursuant to the OPG Contract OPG was required to pay JMX upon completion of the milestones set out in the OPG Contract. JMX asserts that OPG has failed to make payment of approximately \$1.6 million in progress payments owing to JMX pursuant to the milestone schedule in the OPG Contract. In addition, JMX asserts it is owed payment for work performed to remove excess asbestos from the site.

24. JMX has perfected a lien against the OPG project in the amount of approximately \$10.9 million to secure payment.

25. I understand that OPG is currently holding approximately \$3 million in proceeds that it has drawn down under a letter of credit provided to OPG as security under the OPG Contract. JMX asserts that it is entitled to the return of the LC funds.

26. Pursuant to the Stalking Horse Bid, 277 has agreed to fund the litigation against OPG and any proceeds recovered from OPG will be distributed to creditors with claims against the Applicants in respect of that project. It is therefore critical that any possible recovery be pursued expediently for the benefit of those creditors.

27. I understand that my counsel has engaged with OPG's counsel to attempt to resolve a timetable for the litigation of the dispute. I expect that the Applicants may bring a further motion to seek approval of any timetable and/or protocol agreed between counsel.

ASNA Robson Landmark Developments Limited

28. The ASNA project is located in Vancouver, BC and involved the demolition of the Empire Landmark Hotel – a 42-storey building with a revolving restaurant located at the top. The JMX Group successfully demolished the structure and has completed the ASNA contract.

29. JMX perfected a lien in BC for approximately \$6.7 million against the ASNA project for its costs and damages associated with the owner's failure to disclose structural and other issues during the demolition. I understand that other subcontractors also filed liens against the project.

30. On June 2, 2020 ASNA brought a motion to lift the stay of proceedings to permit it to file a petition before the BC Court to, among other things, have the BC Court make a determination on the

Applicants' claim and to vacate the liens on title. Under the direction of the Honourable Madam Justice Conway, ASNA and OPG have negotiated a resolution whereby statutory holdback amounts were released to subcontractors with registered liens on the property and those liens vacated. JMX and ASNA have also negotiated a potential resolution that would allow JMX to vacate its lien in consideration for ASNA posting a \$3 million lien bond as security.

31. As at the date of this affidavit, ASNA has not posted the lien bond, however ASNA's counsel has advised that the bond will be posted imminently. I understand that since a resolution of the liens is imminent, ASNA does not intend to pursue their motion in the Ontario Court. Accordingly, counsel for the Applicants have engaged with ASNA's counsel to attempt to settle a timetable for the next steps to determine JMX's claim against ASNA. If a timetable cannot be settled on consent, I expect the Applicants will seek to schedule an appearance for further directions from this Court.

II. THE STAY EXTENSION IS NECESSARY AND APPROPRIATE

32. In light of the foregoing, an extension of the Stay Period is necessary and appropriate. The Applicants require additional time to finalize the Transaction and to settle the appropriate transaction documents with 277 prior to seeking approval of the Transaction. Various business terms need to be resolved as well as the overarching structure of the transaction.

33. The proposed Transaction stands to benefit the Applicants' stakeholders generally. The terms of the Transaction are preferable to the bankruptcy and liquidation which would occur if the Stay Period is not extended. Pursuant to the terms of the Stalking Horse Bid, the Applicants' going concern business will continue under 277 without disruption to counterparties to the Applicants' construction contract and the employment of approximately 45 employees will be preserved.

34. Further, the Stalking Horse Bid contemplates that trade creditors will have their liabilities assumed by 277 and paid in the normal course. 277 has also agreed to fund the litigation of claims against ASNA and OPG for the benefit of creditors with claims related to those projects.

35. I believe that the Applicants have acted in good faith and with due diligence in advancing their restructuring goals since the Initial Order was granted.

36. The cash flow projection that I understand will be attached in the Monitor's next report to the Court shows that the Applicants will have sufficient funds available to continue operations throughout the requested Stay Period, in accordance with the Initial Order.

SWORN before me by video conference at the city of Toronto in the Province of Ontario this 3rd day of December 2020:



A Commissioner for Taking Affidavits
Name: Sharon Kour



CHARLIE DAHL

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
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Court File No. CV-20-00648528-00CL

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SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

AFFIDAVIT OF CHARLIE DAHL

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Lawyers for JMX Contracting Inc., et al.

TAB 3

Court File No. CV-20-00648528-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	TUESDAY, THE 8 th
)	
JUSTICE CONWAY)	DAY OF DECEMBER, 2020

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 JMX CONTRACTING INC., JMX NATIONAL INC., BRND PROPERTIES
INC., and JMX LEASING INC. (the "Applicants")

STAY EXTENSION 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") for an order extending the Stay Period (as defined herein) up to and including March 8, 2021 was heard this day by video conference due to the COVID-19 crisis.

ON READING the affidavit of Charlie Dahl, sworn 3, 2020, and the Exhibits thereto (the "Dahl Affidavit"), the report of Crowe Soberman Inc. dated December 1, 2020 (the "First Report") in its capacity as monitor of the Applicants (the "Monitor"), and on hearing the submissions of counsel for the Applicants, the Monitor, and for the secured creditor, the Royal Bank of Canada ("RBC"), as well all persons present as stated in the counsel slip,

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 the Stay Period, as defined in the Order of Mr. Justice Hainey dated September 29, 2020 (the “**Initial Order**”), is hereby extended up to and including March 8, 2021.
 3. **THIS COURT ORDERS** that the Closing Date Deadline, as defined in Schedule A to the Initial Order, is hereby extended up to and including January 31, 2020 and may be further extended or amended by the Monitor, in its discretion, by up to two weeks without Court approval.
 4. **THIS COURT ORDERS** that the Fourth Report of Crowe Soberman Inc. in its capacity as proposal trustee of the Applicants (the “**Proposal Trustee**”), the fees of the Proposal Trustee, and the fees of the Proposal Trustee counsel are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
 5. **THIS COURT ORDERS** that the First Report of the Monitor, the fees of the Monitor, and the fees of the Monitor counsel are hereby approved, provided, however, that only the Monitor in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
 6. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.
-

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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STAY EXTENSION ORDER

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