

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

**MOTION RECORD
(returnable October 16, 2019)**

October 15, 2019

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TAB 1

Court File No. CV-19-00628115-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

NOTICE OF MOTION
(returnable October 16, 2019)

Hilco Industrial Acquisitions Canada ULC (“**Hilco**”) will make a motion to the Court on October 16, 2019 at 9:30 a.m., or as soon after that time as the motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ in writing under subrule 37.12.1(1) ;

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule “A”, *inter alia*:
 - a) abridging the time for service of the Notice of Motion and the Motion record herein, if necessary, and validating service thereof;
 - b) authorizing and approving the Receiver’s execution of the Sale Agreement Amendment (as defined herein);
 - c) amending the Order dated September 27, 2019 (the “**Approval and Vesting Order**”) issued by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to
 - (i) provide that the references therein to:
 - (I) the “Purchaser” mean Hilco and Park Thermal (as defined herein), acting jointly and severely; and
 - (II) the Sale Agreement be replaced with “Amended Sale Agreement”; and
 - (ii) delete and replace Schedule “A” – Form of Receiver’s Certificate with the Schedule “A” attached to the Amending Order found at Tab 1A of this Motion Record; and
2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- a) On September 27, 2019, the Court issued an Order (the “**Receivership Order**”) appointing A. Farber and Partners Inc. as receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of B & W Heat Treating Canada, ULC (the “**Debtor**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- b) The Receivership Order took effect on September 30, 2019.
- c) On September 27, 2019, the Court also granted the Approval and Vesting Order (i) approving a sale transaction contemplated by an asset purchase agreement dated September 25, 2019 (the “**Sale Agreement**”) between the Receiver and Hilco, and (ii) vesting the Debtor’s right, title and interest in and to the Purchased Assets (as such term is defined and described in the Sale Agreement) in Hilco in accordance with the provisions of the Sale Agreement and the Approval and Vesting Order.
- d) Subsequent to the date of the Approval and Vesting Order, Hilco entered into a joint venture arrangement with Park Thermal International (1996) Corporation (“**Park Thermal**”, together with Hilco, the “**Purchaser**”) to effect the transactions contemplated in the Sale Agreement (the “**Transaction**”).

- e) It is a precondition to closing of the Transaction that the Purchaser deliver to the Receiver certificates of insurance for property damage and liability insurance.
- f) Park Thermal has obtained the requisite certificates of insurance to satisfy the Sale Agreement conditions.
- g) The Receiver and the Purchaser agree that the Sale Agreement and the Approval and Vesting Order need to be amended in order to reflect the “**Purchaser**” to be Hilco and Park Thermal, acting jointly and severally.
- h) The parties have negotiated and agreed upon an Asset Sale Agreement amendment (the “**Sale Agreement Amendment**”), which, when executed, and in conjunction with the Sale Agreement will constitute the “**Amended Sale Agreement**”.
- i) Since the parties have agreed that the Access Period (as such term is defined in the Amended Sale Agreement) will commence effective as of October 1, 2019 and considering other concessions made by the Purchaser in favour of the Receiver, there is no material prejudice to any party as a result of the proposed amendments to the Approval and Vesting Order or the Sale Agreement.
- j) The provisions of the BIA, and Rules 1.04, 2.01, 2.03, 37, and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194, as amended; and
- k) Such further and other grounds as the lawyers may advise.

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

- (a) The Affidavit of John Sharpe, sworn October 15, 2019; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 15, 2019

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Lawyers for Hilco Industrial Acquisitions
Canada ULC

TO: SERVICE LIST

SCHEDULE "A"

Court File No. CV-19-00628115-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE)
) DAY OF OCTOBER, 2019

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

AMENDING ORDER RE APPROVAL AND VESTING ORDER

THIS MOTION, made by Hilco Industrial Acquisitions Canada ULC ("**Hilco**") for an Order approving an amendment to the Sale Agreement (the "**Sale Agreement Amendment**") and together with the Sale Agreement, the "**Amended Sale Agreement**") appended as Exhibit "C" to the Affidavit of John Sharpe, sworn October 15, 2019 (the "**Sharpe Affidavit**") and amending this Court's Approval and Vesting Order dated September 27, 2019 (the "**Approval and Vesting Order**") in order to reflect the "Purchaser" to be Hilco and Park Thermal International (1996) Corporation ("**Park Thermal**"), acting jointly and severally, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sharpe Affidavit, and on hearing the submissions of counsel for the Receiver, and counsel for Hilco, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS that the time for service of the Motion Record be and is hereby abridged, if necessary, so that the Motion is properly returnable today, and that further service thereof be and it is hereby dispensed with, and that service of the aforementioned materials be and it is hereby validated in all respects.
2. THIS COURT ORDERS that capitalized terms utilized herein and not otherwise defined herein have the meaning ascribed thereto in the Approval and Vesting Order or the Sale Agreement.
3. THIS COURT ORDERS AND DECLARES that the execution of the Sale Agreement Amendment by the Receiver is hereby authorized and approved with such minor amendments as the Receiver and the Purchaser (as defined herein) may deem necessary and that upon its execution the Sale Agreement Amendment amends the Sale Agreement resulting in the Amended Sale Agreement. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction (as amended by the Sale Agreement Amendment) and for the conveyance of the Purchased Assets to the Purchaser.
4. THIS COURT ORDERS AND DECLARES that the defined term "Purchaser" utilized in the Approval and Vesting Order and the accompanying "Schedule "A" - Form of Receiver's Certificate" be amended to mean Hilco and Park Thermal, acting jointly and severally.
5. THIS COURT ORDERS AND DECLARES that the defined term "Sale Agreement" utilized in the Approval and Vesting Order and "Schedule "A" - Form of Receiver's Certificate" be replaced with "Amended Sale Agreement".
6. THIS COURT ORDERS that "Schedule "A" – Form of Receiver's Certificate" appended to the Approval and Vesting Order be deleted and replaced with the attached "Schedule "A" – Form of Receiver's Certificate".

7. 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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule "A" – Form of Receiver's Certificate

Court File No. CV-19-00628115-00CL

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (the "**Court**") dated September 27, 2019 (the "**Receivership Order**"), A. Farber and Partners Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of B & W Heat Treating Canada, ULC (the "**Debtor**"). The Receivership Order took effect on September 30, 2019.

B. Pursuant to Orders of the Court dated September 27, 2019 and October [●], 2019, the Court approved the agreement of purchase and sale made as of September 25, 2019, as amended by an amendment dated October [●], 2019 (together the "**Amended Sale Agreement**") between the Receiver, Hilco Industrial Acquisitions Canada ULC and Park Thermal International (1996) Corporation (together, the

“Purchaser”), and provided for the vesting in the Purchaser all of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Section 5 of the Sale Agreement have been satisfied; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

A. Farber and Partners Inc., in its capacity as Receiver of the undertaking, property and assets of B & W Heat Treating Canada, ULC and not in its personal capacity

Per: _____
 Name:
 Title:

SCHEDULE "A"

CERBERUS BUSINESS FINANCIAL, LLC
Applicant

B & W HEAT TREATING CANADA, ULC
Respondent

Court File No.: CV-19-00628115-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
(Proceeding commenced at Toronto)

**AMENDING ORDER RE APPROVAL
AND VESTING ORDER**

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Lawyers for Hilco Industrial Acquisitions Canada
ULC

TAB 2

Court File No. CV-19-00628115-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

AFFIDAVIT OF JOHN SHARPE
(sworn October 15, 2019)

I, John Sharpe, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am an Executive Vice President of Hilco Industrial Acquisitions Canada ULC ("**Hilco**"). As such, I have knowledge of the matters to which I hereinafter depose, which knowledge is personal to me, obtained from a review of the documents referred to, or, where indicated, I am advised by others in which case I believe such information to be true.

A. Background

2. On September 27, 2019, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Receivership Order**") appointing A. Farber and

Partners Inc., as receiver (the "**Receiver**") of the assets, undertakings and properties (the "**Property**") of B & W Heat Treating Canada, ULC (the "**Debtor**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended. Attached as **Exhibit "A"** is a copy of the Receivership Order, dated September 27, 2019.

3. I understand from counsel that the Receivership Order took effect on September 30, 2019.

4. Also, on September 27, 2019, the Court granted an order (the "**Approval and Vesting Order**") (i) approving a sale transaction contemplated by an asset purchase agreement dated September 25, 2019 between the Receiver and Hilco (the "**Sale Agreement**"), and (ii) vesting the Debtor's right, title and interest in and to the Purchased Assets (as such term is defined and described in the Sale Agreement) in Hilco in accordance with the provisions of the Sale Agreement and the Approval and Vesting Order. Attached as **Exhibit "B"** is a copy of the Approval and Vesting Order.

B. Sale Agreement Amendments

5. Subsequent to the date of the Approval and Vesting Order, Hilco entered into a joint venture arrangement with Park Thermal International (1996) Corporation ("**Park Thermal**", together with Hilco, the "**Purchaser**") to effect the transactions contemplated in the Sale Agreement (the "**Transaction**").

6. Pursuant to Section 8.5 of the Sale Agreement, the Purchaser is required to procure and maintain, during the Access Period (as defined in the Sale Agreement)

certain certificates of insurance for property damage and liability insurance (the "**Certificates of Insurance**").

7. It is a condition to the closing of the Transaction that the Purchaser deliver the Certificates of Insurance to the Receiver.

8. On or about October 7, 2019, Park Thermal, on behalf of Hilco and itself, obtained the Certificates of Insurance.

9. The Receiver and Hilco agree that the Sale Agreement and the Approval and Vesting Order need to be amended to reflect the "**Purchaser**" to be Hilco and Park Thermal, acting jointly and severally.

10. Accordingly, the Purchaser and the Receiver have negotiated and agreed upon an Asset Purchase Agreement amendment (the "**Sale Agreement Amendment**") which, when executed will, in conjunction with the Sale Agreement, constitute the "**Amended Sale Agreement**". Attached as **Exhibit "C"** is a copy of the Sale Agreement Amendment.

11. Considering that the parties have agreed that the Access Period (as such term is defined in the Amended Sale Agreement) will commence effective as of October 1, 2019 (being the first date after the effectiveness of the Receivership Order) and considering other concessions made by the Purchaser in favour of the Receiver, I am advised by my counsel and do verily believe that the proposed amendments to the Sale Agreement and to the Approval and Vesting Order will not materially prejudice any party who has not

consented and agreed to the Sale Agreement Amendment or to the terms of the order sought herein.

12. As such, the amending order attached as **Exhibit "D"** to this affidavit amending the Approval and Vesting Order should be granted in these circumstances.

SWORN BEFORE ME at the City of
Chicago, in the State of Illinois on October
15, 2019.



Commissioner for Taking Affidavits
(or as may be)



JOHN SHARPE

This is Exhibit "A" referred to in the Affidavit of John Sharpe sworn October 15, 2019.



Commissioner for Taking Affidavits (or as may be)

Court File No.: CV-19-00628115-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE –
COMMERCIAL LIST**

THE HONOURABLE

FRIDAY, THE 27TH

JUSTICE PATTILLO

DAY OF SEPTEMBER, 2019

BETWEEN:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "*BIA*") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "*CJA*") appointing A. Farber and Partners Inc. ("Farber") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of B & W Heat Treating Canada, ULC (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the affidavit of Eric Mannix sworn September 26, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, Respondent and proposed Receiver, no one appearing for Canada Revenue Agency or Ministry of Finance (Ontario), although duly served as appears from the affidavit of service of Jeffrey Levine sworn September 26, 2019 and on reading the consent of A. Farber and Partners Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, A. Farber and Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**") with effect from such time on Monday, September 30, 2019, that the Debtor notifies the Receiver in writing that it has terminated the employment of all its employees.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- 3 -

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

- 4 -

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court, and notice under subsection 63(4) of the Ontario Personal Property Security Act shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

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- (p) file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor and nothing in this order shall be interpreted as precluding Farber from acting as trustee in bankruptcy;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting

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records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's 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 Receiver's 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 Receiver, or by further Order of this Court

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upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. **THIS COURT ORDERS** that the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

(a) **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a revolving credit or otherwise, such monies from time to

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time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **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 <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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

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orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://farbergroup.com/engagements/bwheattreating/>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

27. **THIS COURT ORDERS** that the Applicant, the Receiver 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 Debtor's 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

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. **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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

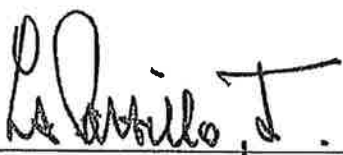
- 13 -

requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2019

PER / PAR:



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2019

PER / PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that A. Farber and Partners Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties B & W Heat Treating Canada, ULC acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

A. Farber and Partners Inc., solely in its
capacity as Receiver of the Property, and not
in its personal capacity

Per: _____

Name:

Title:

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

McMillan LLP
Brookfield Place
181 Bay St, Suite
Toronto, ON M5

Jeffrey Levine LS#: 55582H
jeffrey.levine@mcmillan.ca
Tel: (416) 865-7791 / Fax: (416) 865-7048

Mitch Kocerginski LS#: 67818B
 mitch.kocerginski@mcmillan.ca
 Tel: (416) 865-7262 / Fax: (416) 865-7048

Lawyers for the Applicant

This is Exhibit "B" referred to in the Affidavit of John Sharpe sworn October 15, 2019.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

Court File No.: CV-19-00628115-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

JUSTICE PATELLO



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)
)

FRIDAY, THE 27TH

DAY OF SEPTEMBER, 2019

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated September 25, 2019 (the “**Sale Agreement**”) between Hilco Industrial Acquisitions Canada ULC (the “**Purchaser**”) and A. Farber and Partners Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of B & W Heat Treating Canada, ULC (the “**Debtor**”), and appended as Exhibit “H” to the Affidavit of Eric Mannix, sworn September 26, 2019 (“**Mannix Affidavit**”) and vesting in the Purchaser the Debtor’s right, title and interest in and to

- 2 -

the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Mannix Affidavit and on hearing the submissions of counsel for the Debtor, the Applicant, the Receiver, and counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jeffrey Levine sworn September 26, 2019, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Pattillo dated September 27, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

- 3 -

of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

5. THIS COURT ORDERS that, notwithstanding:

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

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

6. 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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

7. THIS COURT ORDERS that the Record of Confidential Exhibits containing the confidential exhibits referred to in the Affidavit of Eric Mannix sworn September 26, 2019 is sealed until the completion the transaction contemplated by the Sale Agreement, or until further order of this Court.

Ashtabula, T.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2019

PER / PAR: UM

Schedule A – Form of Receiver’s Certificate

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (the “**Court**”) dated September 27, 2019, A. Farber and Partners Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of B & W Heat Treating Canada, ULC (the “**Debtor**”).

B. Pursuant to an Order of the Court dated September 27, 2019, the Court approved the agreement of purchase and sale made as of September 25, 2019 (the “**Sale Agreement**”) between the Receiver and Hilco Industrial Acquisitions Canada ULC (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set

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out in section 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

A. Farber and Partners Inc., in its capacity as Receiver of the undertaking, property and assets of B & W Heat Treating Canada, ULC and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Claims to be Released, Discharged and Expunged from Purchased Assets

Secured Party	File No.
Cerberus Business Finance, LLC	681898986

CERBERUS BUSINESS FINANCIAL, LLC B & W HEAT TREATING CANADA, ULC
Applicant and Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

SALE APPROVAL AND VESTING ORDER

McMillan LLP
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Mitch Kocerginski LSO#: 67818B
mitch.kocerginski@mcmillan.ca
Tel: (416) 865-7262 / Fax: (416) 865-7048

Lawyers for the Applicant

This is Exhibit "C" referred to in the Affidavit of John Sharpe sworn October 15, 2019.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

AMENDMENT AGREEMENT

This amendment to the Purchase Agreement (defined below) is dated as of October 15, 2019 (the “**Amendment**”) among A. Farber & Partners Inc. (“**Farber**”), in its capacity as Court-appointed receiver (“**Seller**” or “**Receiver**”) of B&W Heat Treating Canada ULC (“**B&W**”), Hilco Industrial Acquisitions Canada ULC (“**Hilco**”) and Park Thermal International (1996) Corporation (“**Park Thermal**” and together with the Receiver and Hilco, the “**Parties**” and each a “**Party**”).

RECITALS

WHEREAS the Receiver and Hilco entered into a purchase agreement dated September 25, 2019 (the “**Purchase Agreement**”) pursuant to which the Seller agreed to sell and Hilco agreed to purchase the Assets.

AND WHEREAS the Parties hereto desire to amend the Purchase Agreement to add Park Thermal as an additional purchaser;

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. *Definitions.* Capitalized terms used in this Amendment and not otherwise defined shall have the meanings ascribed to such terms in the Purchase Agreement.
2. *Amendments to Purchase Agreement.* As of the Effective Date (defined below), the Purchase Agreement is hereby amended or modified as follows:
 - a. Park Thermal is hereby added to the Purchase Agreement as a purchaser and all references to “Purchaser” in the Purchase Agreement shall be read and interpreted to include Park Thermal.
 - b. The following sentence is hereby added to the end of Section 9.1 of the Purchase Agreement:

 “For greater certainty the Access Period (including all extensions) shall expire on or before March 31, 2020.”
 - c. Exhibit A of the Purchase Agreement is deleted in its entirety and replaced with Exhibit A attached hereto.
3. *Date of Effectiveness; Limited Effect.* This Amendment will become effective as of the date first written above (the “**Effective Date**”). Except as expressly provided in this Amendment, all of the terms and provisions of the Purchase Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver

of any other provision of the Purchase Agreement or as a waiver of or consent to any further or future action on the part of any Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Purchase Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein" or words of like import will mean and be a reference to the Purchase Agreement as amended by this Amendment.

4. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

- a. It has all necessary corporate power and authority to enter into this Amendment and to perform its obligations hereunder and under the Purchase Agreement as amended by this Amendment.
- b. The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary corporate action on the part of such Party.
- c. This Amendment has been executed and delivered by such Party and (assuming due authorization, execution and delivery by the other Parties hereto) constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 7 AND ARTICLE 8 OF THE PURCHASE AGREEMENT AND IN THIS SECTION 4 OF THIS AMENDMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.

5. Binding Agreement. This Amendment and the right of the Parties hereunder shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

6. Governing Law; Attornment. This Amendment and any dispute arising from or in relation to this Amendment are governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province. Each Party irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

7. Counterparts and Execution. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A manual signature on this Amendment or other documents to be

delivered pursuant to this Amendment, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of this Amendment or other documents to be delivered pursuant to this Amendment, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Amendment or such other document for all purposes.

8. Severability. Any term or provision of this Amendment that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

9. Captions. The captions and headings used in this Amendment are inserted for convenience only and shall not constitute a part hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned parties have entered into and executed this Amendment to be effective as of the day and year first above written.

PURCHASER:

**HILCO INDUSTRIAL ACQUISITIONS
CANADA ULC**

By: _____
Name: _____
Title: _____

**PARK THERMAL INTERNATIONAL (1996)
CORPORATION**

By: _____
Name: _____
Title: _____

SELLER:

A. FARBER & PARTNERS INC. solely in its capacity as Court-appointed Receiver of B&W Heat Treating Canada ULC and not in its personal or corporate capacity

By: _____
Name: _____
Title: _____

Bluewater Thermal Solutions

Exhibit A

Description

Manufacturer Unknown 36" x 72" Spray/Dunk Cylinder Washer, with (4) Agitators, Oil Skimmer, Filter, Etc.

Manufacturer Unknown 36" x 72" Gas Fired Spray Washer, with Oil Skimmer

Surface Combustion Model Super 36 Allcase, 36" x 72" Furnace, S/N 540A (New 1985), 104-KVA, 575V, 3-PH, 105-Amps, 60Hz

Surface Combustion Model Super 36 Allcase, 36" x 72" Furnace, S/N 540B (New 1985), 108-KVA, 575V, 3-PH, 109-Amps, 60Hz

B&W 36" x 72" Allcase Furnace, S/N CA-9 (New 1995), 575V, 72-Amps, 3-Ph, 60-Cy

Surface Combustion Model DEDP, 36" x 72" Charge Car, S/N BC-45275 (New 2014), 575V, 3-Ph, 60Hz

B&W 36" x 72" Allcase Furnace, S/N CA-10 (New 1995), 575V, 72-Amps, 3-Ph, 60-Cy

#Furnace #8 B&W Allcase Natural Gas Tempering Furnace, S/N ACD8, Max. Temp. 1400°F, 0.95 MBTU

SBS Oil Cooler, S/N 7298 (New 2013), 100 MAWP

Surface Combustion Model 36-72-36, Allcase Furnace, S/N BC-45231-01, with Top Cool, 4110-CFH, 1800°F Max. Temperature, 110-KW

Surface Combustion Model Uni-Draw, Furnace, S/N BC-45232-1 (New 2013), 910-SCFH, 1400°F

Manufacturer Unknown Orange Oil Storage Tank

(2) Manufacturer Unknown Holding Stations

#Furnace #7 B&W Natural Gas Tempering Furnace, S/N ACD7, 1400°F Max Temperature, 0.95 MBTU

Manufacturer Unknown Holding Station

#Furnace #6 B&W Natural Gas Tempering Furnace, S/N ACD6, 1400°F Max Temperature, 1.0 MBTU

#Furnace #5 B&W Natural Gas Tempering Furnace, S/N ACD5, 1400°F Max Temperature, 1.0 MBTU

Manufacturer Unknown Holding Station

(4) Manufacturer Unknown Lifting Stations

Can Eng Rotary Hearth Furnace, S/N 104007/15,
575/3/60/90 FLA, Max. Input 2,750,000 BTUH Gross,
Complete with B&W Rotary Aging Furnace #1, S/N P8;
(2) Fanuc M9000iA Pick & Place Robots

Can Eng Rotary Hearth Furnace, S/N 104007/16,
575/3/60/90 FLA, Max. Input 2,750,000 BTUH Gross,
Complete with Mfg. Unknown Rotary Aging Furnace;
(2) Fanuc M9000iA Pick & Place Robots

Manufacturer Unknown Heat Treat Salt Line

Can Eng Mesh Belt Line & Quench Furnace, S/N 94446,
Complete with Loader, Oil Skimmer and Controls

Can Eng Mesh Belt Line & Quench Furnace, S/N N/A,
Complete with Loader, Oil Skimmer and Controls

Surface Combustion Model S3RX-3600, Gas Generator,
S/N 592 (New 1989), 6-KVA, 575/3/60/7-Amp

(3) Brinnell Hardness Testers

#3260

Park Thermal 2000°F High Heat Furnace

Manufacturer Unknown Cut-Off Saw

Surface Combustion Model DEDP, Charge Car, S/N 540C

Indentron Digital Hardness Tester

Wilson Model 3JR, Hardness Tester

Wilson Model 4JR, Hardness Tester

Wilson Series 500, Hardness Tester

Buehler Series Pneumet II, Mounting Press

Buehler Series Ecomet III, Grinder

Metkon Model Ecopress 50, Mounting Press

Buehler Model Abrasimet 250, Cutter

Buehler Model Hardimet, Grinder

Lot- Miscellaneous Lab Cabinetry

Affri Micro Hardness Tester

Leco Model RT240, Hardness Tester

New Age Model 43001000, Tester

(2) Beuhler Sample Cabinets

Beuhler Model Micromet II, Micro Hardness Tester

Unimet Microscope

Lot- Spare Parts, (New Handler/Burner Tubes)

Lot- Miscellaneous Spare Parts

#Furnace #5

B&W Temper Furnace, S/N AD-5 (New 1998), 575/3/60

#Furnace #3

B&W 1350°F Temper Furnace, S/N J507

Lot- Misc. Fixtures, Baskets and Grids

Phoenix Automatic Stretch Wrapper, S/N N/A, 48" Table,
48" Vertical Travel

Tennant Model 365, LPG Ride On Floor Sweeper, S/N 365-
4290

(2) Motivation Model LCH-5, 10,000-Lb. Forklift Truck
Boom Extensions

Culligan Water Treatment System, with (2) 250-Gallon Storage Tanks, UV Pure Upstream NC10-75 Reverse Osmosis System, Culligan Plus Series Control, Water Conditioner, Tanks, Pumps

Lot- Machine Shop Contents Including Upstairs Mezzanine, Consisting of: Welders, Parts Washer, Enerpac Shop Press, Drills, Landa Pressure Washer, Pallet Trucks, Grinders, Tool Boxes, Tables, Vises, Hand & Power Tools, Hardware, Store Inventory, Jacks, Ladders, Oxy-Acet Torches, Hoists, Welding Supplies, Steel Inventory, Ridgid Threaders & Dies, Etc.

MSA Model GX2 Galaxy, Gas Detector

O'Brien 2-Ton Bridge Crane, Mounted Floor to Wall, with Trolley, No Hoist

O'Brien 275-Lb. Jib Arm

O'Brien 4,000-Lb. Free Standing Jib Arm, with 12' Arm, 18" Column

WF Wells Horizontal Band Saw

Stelco Mobile Pump, with Filter

Skyjack Model SJ III 3220, Scissor Lift

Manufacturer Unknown 48" x 30" Approx. 500-Ton Hydraulic Shop Press

(2) Custom Designed & Fabricated 22" x 72" Shaker Tables

(2) Manufacturer Unknown 18"W Incline Conveyors, with Cooling Blower Units

Pennsylvania Model 7600, Digital Floor Scale, with 48" x 48" Platform

Kaeser Model DB130, Air Compressor, with Omega Dryer (Please Note: Not Hooked Up)

Kohler Model 30RZ262, 30-kw Generator (Please Note:
Not Hooked Up)

Richard Wilcox 10-Ton x 30' Approx. Bridge Crane

(2) Demag 1-Ton x 12' Approx. Single Girder Cranes

Atlas Copco Model GA75, Rotary Screw Air Compressor

Devair Model K100 Iroquois, Rotary Screw Air
Compressor

Devair Model Proday, Refrigerated Air Dryer

Domnick Hunter Model RDM-0630 Eco Smart,
Refrigerated Air Dryer

Large Receiver Tank

Manufacturer Unknown Small Receiver Tank

Manufacturer Unknown Elevator/Bucket Loader

(2) Nederman Portable Fume Exhaust Hoods

Atlas Copco Model FD40, Tank, with Air Compressor

Empire Model PF3645, Shot Blast Cabinet, S/N 143079,
with Empire DCR80 Dust Collector

(2) Manufacturer Unknown 4,000-Lb. x 48" x 48" Scissor
Lift Tables

O'Brien 1-Ton x 30' Single Girder Bridge Crane, with CM 1-
Ton Chain Hoist

Lot- Yard Scrap

Lot- Misc. Equipment Throughout Consisting of: Scales,
Nissan Forklift
Strapping Caddies, Dump Hoppers, Dollies, Chains,
Slings, Totes, Bucket Loaders

Lot- Front Offices, Shop Offices, First Aid, Cafeteria,
furniture etc

This is Exhibit "D" referred to in the Affidavit of John Sharpe sworn October 15, 2019.



Commissioner for Taking Affidavits (or as may be)

Court File No. CV-19-00628115-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	
)	
JUSTICE)	DAY OF OCTOBER, 2019

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

AMENDING ORDER RE APPROVAL AND VESTING ORDER

THIS MOTION, made by Hilco Industrial Acquisitions Canada ULC ("**Hilco**") for an Order approving an amendment to the Sale Agreement (the "**Sale Agreement Amendment**") and together with the Sale Agreement, the "**Amended Sale Agreement**") appended as Exhibit "C" to the Affidavit of John Sharpe, sworn October 15, 2019 (the "**Sharpe Affidavit**") and amending this Court's Approval and Vesting Order dated September 27, 2019 (the "**Approval and Vesting Order**") in order to reflect the "Purchaser" to be Hilco and Park Thermal International (1996) Corporation ("**Park Thermal**"), acting jointly and severally, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sharpe Affidavit, and on hearing the submissions of counsel for the Receiver, and counsel for Hilco, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS that the time for service of the Motion Record be and is hereby abridged, if necessary, so that the Motion is properly returnable today, and that further service thereof be and it is hereby dispensed with, and that service of the aforementioned materials be and it is hereby validated in all respects.
 2. THIS COURT ORDERS that capitalized terms utilized herein and not otherwise defined herein have the meaning ascribed thereto in the Approval and Vesting Order or the Sale Agreement.
 3. THIS COURT ORDERS AND DECLARES that the execution of the Sale Agreement Amendment by the Receiver is hereby authorized and approved with such minor amendments as the Receiver and the Purchaser (as defined herein) may deem necessary and that upon its execution the Sale Agreement Amendment amends the Sale Agreement resulting in the Amended Sale Agreement. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction (as amended by the Sale Agreement Amendment) and for the conveyance of the Purchased Assets to the Purchaser.
 4. THIS COURT ORDERS AND DECLARES that the defined term "Purchaser" utilized in the Approval and Vesting Order and the accompanying "Schedule A" - Form of Receiver's Certificate" be amended to mean Hilco and Park Thermal, acting jointly and severally.
 5. THIS COURT ORDERS AND DECLARES that the defined term "Sale Agreement" utilized in the Approval and Vesting Order and "Schedule A" - Form of Receiver's Certificate" be replaced with "Amended Sale Agreement".
 6. THIS COURT ORDERS that "Schedule A" – Form of Receiver's Certificate" appended to the Approval and Vesting Order be deleted and replaced with the attached "Schedule A" – Form of Receiver's Certificate".
-

- 2 -

7. 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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

- 2 -

Schedule "A" – Form of Receiver's Certificate

Court File No. CV-19-00628115-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

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

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (the "**Court**") dated September 27, 2019 (the "**Receivership Order**"), A. Farber and Partners Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of B & W Heat Treating Canada, ULC (the "**Debtor**"). The Receivership Order took effect on September 30, 2019.

B. Pursuant to Orders of the Court dated September 27, 2019 and October [●], 2019, the Court approved the agreement of purchase and sale made as of September 25, 2019, as amended by an amendment dated October [●], 2019 (together the "**Amended Sale Agreement**") between the Receiver, Hilco Industrial Acquisitions Canada ULC and Park Thermal International (1996) Corporation (together, the

- 2 -

"Purchaser"), and provided for the vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Section 5 of the Sale Agreement have been satisfied; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

**A. Farber and Partners Inc., in its
capacity as Receiver of the undertaking,
property and assets of B & W Heat
Treating Canada, ULC and not in its
personal capacity**

Per: _____
Name:
Title:

CERBERUS BUSINESS FINANCIAL, LLC
Applicant

B & W HEAT TREATING CANADA, ULC
Respondent

Court File No.: CV-19-00628115-00CL

-and -

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
(Proceeding commenced at Toronto)

AMENDING ORDER RE APPROVAL
AND VESTING ORDER

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Lawyers for Hilco Industrial Acquisitions Canada
ULC

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

AFFIDAVIT OF JOHN SHARPE

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Lawyers for Hilco Industrial Acquisitions Canada ULC

B & W HEAT
Respondent

ONTARIO

WORKING COMMENCED AT TORONTO

MOTION RECORD

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