

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**MOTION RECORD  
(returnable August 16, 2018)**

August 3, 2018

**AIRD & BERLIS LLP**  
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*Lawyers for the Receiver*

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# TAB 1

Court File No. CV-18-595577-00CL

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

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
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**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FIRST REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER OF 1340923 ONTARIO INC. AND  
WAXMAN REALTY COMPANY INC.**

**NOTICE OF MOTION  
(returnable August 16, 2018)**

A. Farber & Partners Inc. (“**Farber**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 1340923 Ontario Inc. (“**134Co**”) and Waxman Realty Company Inc. (“**Waxman**”, and together with 134Co, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on Thursday, August 16, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

1. **THE MOTION IS FOR** an Order, amongst other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the report filed by Farber, in its capacity as the proposed Receiver, dated April 17, 2018 (the “**Proposed Receiver’s Report**”);
- (c) approving the first report filed by Farber, in its capacity as the Receiver, dated August 3, 2018 (the “**First Report**”) and the activities of the Receiver set out therein;
- (d) approving the transaction (the “**Transaction**”) contemplated by the agreement of purchase and sale between the Receiver and American Iron & Metal Company Inc. (“**AIM**”) dated June 5, 2018 (the “**Original Sale Agreement**”), as amended by an amending agreement dated July 31, 2018 (the “**Amendment**”, and together with the Original Sale Agreement, “**Sale Agreement**”), and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (e) vesting in AIM all the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”) free and clear of all encumbrances except for certain permitted encumbrances;
- (f) approving the amount of the BDC Credit Amount (as defined in the First Report);
- (g) approving the fees and disbursements of the Receiver and its counsel; and
- (h) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made June 5, 2018 (the “**Receivership Order**”), Farber was appointed as the Receiver of all the assets, undertakings and properties of the Debtors (collectively, the “**Property**”);

- (b) pursuant to a second Order of the Honourable Mr. Justice Pattillo of the Court made June 5, 2018 (the “**Sale Process Order**”), His Honour approved a stalking horse sale process in respect of the Debtors’ real property interests (the “**Sale Process**”), including, without limitation, the Original Sale Agreement as the stalking horse bid pursuant to the Sale Process
- (c) the Proposed Receiver’s Report was filed to supplement the Affidavit of Kamila Wirpszo sworn April 11, 2018 in support of the granting of the Sale Process Order;
- (d) as set out in more detail in the First Report, the Sale Process did not result in any offers other than the stalking horse bid (i.e., the Original Sale Agreement), and the Receiver completed the Sale Process by declaring the stalking horse bid to be the winning bid;
- (e) the Amendment to the Original Sale Agreement was subsequently prepared to allow for an earlier Closing Date (as defined in the Original Sale Agreement) for the Transaction;
- (f) a condition of the Sale Agreement is that this Court provide a sale approval and vesting order in favour of AIM;
- (g) the purchase price contemplated by the Sale Agreement represents the best and only offer received for the Purchased Assets;
- (h) as set out in the more detail in the First Report and the Sale Agreement, the BDC Credit Amount represents the amount recoverable by AIM from 134Co for the discharge of 134Co’s obligations under a mortgage in favour of Business Development Bank of Canada that is registered on title to 134Co’s real property interests;
- (i) the Receiver has filed with the Court its First Report, outlining, amongst other things, the actions of the Receiver in respect of the Sale Process and advising as to the results thereof;

- (j) the Receiver's activities have been reasonable and responsible in accordance with the Receiver's mandate as provided by the Receivership Order;
  - (k) the Receiver and its counsel have accrued fees and expenses in their capacity as the Receiver and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Receivership Order;
  - (l) the Receivership Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts;
  - (m) the facts set out in the First Report;
  - (n) section 243 of the *Bankruptcy and Insolvency Act* (Canada);
  - (o) section 101 of the *Courts of Justice Act* (Ontario);
  - (p) rules 1.04, 2.03, 3.02, 11 and 37 of the *Rules of Civil Procedure* (Ontario); and
  - (q) such further and other grounds as counsel may advise and this Court may permit.
3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:
- (a) the First Report, inclusive of the fee affidavits put forward by each of the Receiver and its counsel; and
  - (b) such further and other material as counsel may submit and this Court may permit.



Date: August 3, 2018

**AIRD & BERLIS LLP**

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*Lawyers for the Receiver*

**TO: ATTACHED SERVICE LIST**

AMERICAN IRON & METAL COMPANY INC.

- and -

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

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

**Proceedings commenced at Toronto**

**NOTICE OF MOTION  
(returnable August 16, 2018)**

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*Lawyers for A. Farber & Partners Inc., in its capacity as  
the Court-appointed Receiver*

# TAB 2

Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 16TH DAY
	)	
JUSTICE	)	OF AUGUST, 2018

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Ontario Inc. (together with Waxman, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the “**Purchaser**”), as purchaser, dated June

5, 2018 and amended by a letter agreement dated July 31, 2018 (the “**Sale Agreement**”), a copy of which is attached as Appendix “G” to the First Report of the Receiver dated August 3, 2018 (the “**First Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “Purchased Assets” in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Eunice Baltkois sworn August 3, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved (including, without limitation, the BDC Credit Amount (as defined in the First Report)), and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for 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, including, without limitation, all of the Debtor’s right, title and interest in and to the Real Property (as defined herein) listed on Schedule B hereto, 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 Mr. Justice Pattillo made June 5, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the

sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **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.

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.

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

Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AMERICAN IRON & METAL COMPANY INC.**

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- and -

**1340923 ONTARIO INC. and  
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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**RECEIVER’S CERTIFICATE**

**RECITALS**

- I. Pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 5, 2018, A. Farber & Partners Inc. (“**Farber**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Ontario Inc. (together with Waxman, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the “**Property**”).

II. Pursuant to an Order of the Court dated August 16, 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the “**Purchaser**”), as purchaser, dated June 5, 2018 and amended by a letter agreement dated July 31, 2018 (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of all the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 satisfaction by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in 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.

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



**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name:

Title:

**Schedule "B" – Legal Description of the Real Property****PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

## Schedule "C" – Claims

Instruments to Be Deleted from Title to Real Property**PIN 07034-0014 (LT)**

Reg. No.	Date	Type	Registered Amount	Parties From	Parties To
HR868013	2010/08/12	TRANSFER	\$4,220,000	DOVER INVESTCO INC.	WAXMAN REALTY COMPANY INC.
HR1070901	2012/12/13	CHARGE	\$3,000,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1142193	2013/10/23	NOTICE	-	WAXMAN REALTY COMPANY INC. AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL GP INC.
HR1446119	2017/04/11	LIEN	\$41,006	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-
HR1446123	2017/04/11	LIEN	\$81,797	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-

**PIN 32281-0152 (LT)**

Reg. No.	Date	Type	Registered Amount	Parties From	Parties To
BC116720	2007/06/29	TRANSFER	\$1,899,170	VICANO DEVELOPMENTS LIMITED	1340923 ONTARIO INC.
BC234044	2012/12/13	CHARGE	\$3,000,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.
BC338515	2018/05/25	LIEN	\$88,121	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-
BC338515	2018/05/25	LIEN	\$80,108	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-

**Actions**

1. NASG Canada Inc. and Camille Bouliane and al., Court File Nr. CV-14-10606-00CL.
2. Morris Waxman and al. and Chester Waxman and al, Court File Nr. 07-CL-6901.

## Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants

## PIN 07034-0014 (LT)

Reg. No.	Date	Type	Registered Amount	Parties From	Parties To
119980	1961/01/25	BYLAW	-	-	-
H63200	1975/10/07	Notice	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
20R4669	1980/02/21	PLAN REFERENCE	-	-	
H271116	1986/05/07	NOTICE	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
HR868018	2010/08/12	NOTICE OF LEASE	-	WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.
HR1071402	2012/12/14	TRANSFER	\$2,500,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1321803	2015/12/09	APL CH NAME OWNER	-	AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.
HR1331162	2016/01/21	NOTICE OF LEASE	-	AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA	-

## PIN 32281-0152 (LT)

Reg. No.	Date	Type	Registered Amount	Parties From	Parties To
2R1058	1977/05/31	PLAN REFERENCE	-	-	-
2R3388	1989/09/28	PLAN REFERENCE	-	-	-
2R6246	2004/02/26	PLAN REFERENCE	-	-	-
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC116728	2007/06/29	NO ASSGN RENT GEN	-	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

AMERICAN IRON & METAL COMPANY INC.

- and -

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

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

**Proceedings commenced at Toronto**

**APPROVAL AND VESTING ORDER**

**AIRD & BERLIS LLP**  
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*Lawyers for A. Farber & Partners Inc., in its capacity as the Court-  
appointed Receiver*



# TAB 3



## APPROVAL AND VESTING ORDER

**THIS MOTION**, made by ~~[RECEIVER'S NAME]~~ A. Farber & Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the "Receiver"), without security, of all the undertaking, property and assets of [DEBTOR] (the "Debtor") assets, undertakings and properties of Waxman Realty Company Inc. ("Waxman") and 1340923 Ontario Inc. (together with Waxman, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "as vendor, and American Iron & Metal Company Inc. (the "Purchaser")" dated [DATE] and appended to the"), as purchaser, dated June 5, 2018 and amended by a letter agreement dated July 31, 2018 (the "**Sale Agreement**"), a copy of which is attached as Appendix "G" to the First Report of the Receiver dated [DATE] August 3, 2018 (the "First Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the ~~assets~~ property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING] and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] Eunice Baltkois sworn [DATE] August 3, 2018, filed<sup>†</sup>.

<sup>†</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> ~~(including, without limitation, the BDC Credit Amount (as defined in the First Report))~~, and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for 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 ~~and, including, without limitation, all of the Debtor's right, title and interest in and to the Real Property (as defined herein)~~ listed on Schedule B hereto<sup>4</sup>, 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

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] dated [DATE] Pattillo made June 5, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~{Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver}~~ appropriate Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule "B"** hereto (the **"Real Property"**) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).



4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, 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.

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

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

6. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

(a) ~~(a)~~ the pendency of these proceedings;

<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~(b)-(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

~~(e)-(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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. ~~9.~~ **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-18-595577-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BETWEEN:

~~PLAINTIFF~~

Plaintiff

AMERICAN IRON & METAL COMPANY INC.

Applicant

- and -

~~DEFENDANT~~

Defendant

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Respondents

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

RECEIVER'S CERTIFICATE

RECITALS

I. A. \_\_\_\_\_ Pursuant to an Order of the Honourable ~~[NAME OF~~  
~~JUDGE]~~ Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the

~~"Court") dated [DATE OF ORDER], [NAME OF RECEIVER]~~ **"Court"**) dated June 5, 2018, A. Farber & Partners Inc. (**"Farber"**) was appointed as the receiver (in such capacity, the **"Receiver"**), without security, of all of the ~~undertaking, property and assets of [DEBTOR] (the "Debtor").~~ assets, undertakings and properties of Waxman Realty Company Inc. ("Waxman") and 1340923 Ontario Inc. (together with Waxman, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the "Property").

II. B. \_\_\_\_\_ Pursuant to an Order of the Court dated ~~[DATE]~~ August 16, 2018, the Court approved the agreement of purchase and sale ~~made as of [DATE OF AGREEMENT] (the "Sale Agreement")~~ between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER] (the "Purchaser")~~, as vendor, and American Iron & Metal Company Inc. (the "Purchaser"), as purchaser, dated June 5, 2018 and amended by a letter agreement dated July 31, 2018 (the "Sale Agreement"), and provided for the vesting in the Purchaser of all the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 ~~payments~~ satisfaction by the Purchaser of the ~~Purchase Price~~ purchase price for the Purchased Assets; (ii) that the conditions to ~~Closing~~ closing as set out in ~~section 9~~ 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.

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

**THE RECEIVER CERTIFIES** the following:

1.     ~~1.~~ — The Purchaser has ~~paid~~satisfied and the Receiver has received the Purchase Price for the Purchased Assets ~~payable~~ on the Closing Date pursuant to the Sale Agreement;

2.     ~~2.~~ — The conditions to Closing as set out in ~~section~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; ~~and~~

3.     ~~3.~~ — The Transaction has been completed to the satisfaction of the Receiver; and

4.     ~~4.~~ — This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

5.

~~[NAME OF RECEIVER]~~, A. FARBER & PARTNERS INC., solely in its capacity as ~~Receiver of the undertaking, property and assets of [DEBTOR]~~ the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule "B—Purchased Assets" – Legal Description of the Real Property**

**PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

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

**Instruments to Be Deleted from Title to Real Property**

**PIN 07034-0014 (LT)**

<u>Reg. No.</u>	<u>Date</u>	<u>Type</u>	<u>Registered Amount</u>	<u>Parties From</u>	<u>Parties To</u>
HR868013	2010/08/12	TRANSFER	\$4,220,000	DOVER INVESTCO INC.	WAXMAN REALTY COMPANY INC.
HR107090 1	2012/12/13	CHARGE	\$3,000,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR114219 3	2013/10/23	NOTICE	=	WAXMAN REALTY COMPANY INC. AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL GP INC.
HR144611 9	2017/04/11	LIEN	\$41,006	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	=
HR144612 3	2017/04/11	LIEN	\$81,797	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	=

**PIN 32281-0152 (LT)**

<u>Reg. No.</u>	<u>Date</u>	<u>Type</u>	<u>Registered Amount</u>	<u>Parties From</u>	<u>Parties To</u>
BC116720	2007/06/29	TRANSFER	\$1,899,170	VICANO DEVELOPMENTS LIMITED	1340923 ONTARIO INC.
BC234044	2012/12/13	CHARGE	\$3,000,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.
BC338515	2018/05/25	LIEN	\$88,121	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	=
BC338515	2018/05/25	LIEN	\$80,108	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	=

**Actions**

1. NASG Canada Inc. and Camille Bouliane and al., Court File Nr. CV-14-10606-00CL.

2. Morris Waxman and al. and Chester Waxman and al. Court File Nr. 07-CL-6901.

# Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants

related to the Real Property PIN 07034-0014 (LT)  
(unaffected by the Vesting Order)

<u>Reg. No.</u>	<u>Date</u>	<u>Type</u>	<u>Registered Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>1 9980</u>	<u>1961/01/25</u>	<u>BYLAW</u>	=	=	=
<u>H63200</u>	<u>1975/10/07</u>	<u>Notice</u>	=	=	<u>THE CORPORATION OF THE CITY OF BURLINGTON</u>
<u>20R4669</u>	<u>1980/02/21</u>	<u>PLAN REFERENCE</u>	=	=	
<u>H271116</u>	<u>1986/05/07</u>	<u>NOTICE</u>	=	=	<u>THE CORPORATION OF THE CITY OF BURLINGTON</u>
<u>HR868018</u>	<u>2010/08/12</u>	<u>NOTICE OF LEASE</u>	=	<u>WAXMAN REALTY COMPANY INC.</u>	<u>WAXMAN INDUSTRIAL SERVICES CORP.</u>
<u>HR1071402</u>	<u>2012/12/14</u>	<u>TRANSFER</u>	<u>\$2,500,000</u>	<u>WAXMAN REALTY COMPANY INC.</u>	<u>AMERICAN IRON &amp; METAL GP INC.</u>
<u>HR1321803</u>	<u>2015/12/09</u>	<u>APL CH NAME OWNER</u>	=	<u>AMERICAN IRON &amp; METAL GP INC.</u>	<u>AMERICAN IRON &amp; METAL COMPANY INC.</u>
<u>HR1331162</u>	<u>2016/01/21</u>	<u>NOTICE OF LEASE</u>	=	<u>AMERICAN IRON &amp; METAL COMPANY INC. WAXMAN REALTY COMPANY INC.</u>	<u>WC ENERCO INC.</u>
<u>HR1331172</u>	<u>2016/01/21</u>	<u>NO CHARGE LEASE</u>	<u>\$11,797.135</u>	<u>WC ENERCO INC.</u>	<u>ROYAL BANK OF CANADA</u>
<u>HR1331180</u>	<u>2016/01/21</u>	<u>NO SEC INTEREST</u>	<u>\$11,797.135</u>	<u>ROYAL BANK OF CANADA</u>	=

## PIN 32281-0152 (LT)

<u>Reg. No.</u>	<u>Date</u>	<u>Type</u>	<u>Registered Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>2R1058</u>	<u>1977/05/31</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>2R3388</u>	<u>1989/09/28</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>2R6246</u>	<u>2004/02/26</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>BC32735</u>	<u>2004/03/02</u>	<u>TRANSFER EASEMENT</u>	<u>\$1</u>	<u>VICANO DEVELOPMENTS LIMITED</u>	<u>THE CORPORATION OF THE CITY OF BRANTFORD</u>
<u>BC116723</u>	<u>2007/06/29</u>	<u>CHARGE</u>	<u>\$2,050,000</u>	<u>1340923 ONTARIO INC.</u>	<u>BUSINESS DEVELOPMENT BANK OF CANADA</u>



<u>Reg. No.</u>	<u>Date</u>	<u>Type</u>	<u>Registered Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>2R1058</u>	<u>1977/05/31</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>2R3388</u>	<u>1989/09/28</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>2R6246</u>	<u>2004/02/26</u>	<u>PLAN REFERENCE</u>	=	=	=
<u>BC32735</u>	<u>2004/03/02</u>	<u>TRANSFER EASEMENT</u>	<u>\$1</u>	<u>VICANO DEVELOPMENTS LIMITED</u>	<u>THE CORPORATION OF THE CITY OF BRANTFORD</u>
<u>BC116723</u>	<u>2007/06/29</u>	<u>CHARGE</u>	<u>\$2,050,000</u>	<u>1340923 ONTARIO INC.</u>	<u>BUSINESS DEVELOPMENT BANK OF CANADA</u>
<u>BC116728</u>	<u>2007/06/29</u>	<u>NO ASSGN RENT GEN.</u>	=	<u>1340923 ONTARIO INC.</u>	<u>BUSINESS DEVELOPMENT BANK OF CANADA</u>
<u>BC234161</u>	<u>2012/12/14</u>	<u>TRANSFER</u>	<u>\$750,000</u>	<u>1340923 ONTARIO INC.</u>	<u>AMERICAN IRON &amp; METAL GP INC.</u>

AMERICAN IRON & METAL COMPANY INC.

- and -

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP  
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Lawyers for A. Farber & Partners Inc., in its capacity as the  
Court-appointed Receiver

Document comparison by Workshare Compare on August-03-18 9:28:55 AM

Input:	
Document 1 ID	interwovenSite://AB-WS1/CM/33308754/1
Description	#33308754v1<CM> - Model Approval and Vesting Order (amended January 21/14)
Document 2 ID	interwovenSite://AB-WS1/CM/33307802/2
Description	#33307802v2<CM> - Form of Vesting Order (2)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Style change	
Format change	
<del>Moved-deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	322
Deletions	110
Moved from	0
Moved to	0



# TAB 4

Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 16TH DAY
	)	
JUSTICE	)	OF AUGUST, 2018

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**FIRST REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER OF 1340923 ONTARIO INC. AND  
WAXMAN REALTY COMPANY INC.**

**ORDER**

**(re: Ancillary Matters)**

**THIS MOTION**, made by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 1340923 Ontario Inc. (“**134Co**”) and Waxman Realty Company Inc. (“**Waxman**”, and together with 134Co, the “**Debtors**”), for an Order, *inter alia*: (i)

approving the report filed by Farber, in its capacity as the proposed Receiver, dated April 17, 2018 (the “**Proposed Receiver’s Report**”); (ii) approving the First Report of the Receiver dated August 3, 2018 (the “**First Report**”) and the activities of the Receiver set out therein; and (iii) approving the fees and disbursements of the Receiver and its counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Proposed Receiver’s Report and the First Report, including the fee affidavits appended to the First Report on behalf of the Receiver and its counsel (the “**Fee Affidavits**”), and on hearing the submissions of the Receiver’s counsel and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn August 3, 2018, filed,

1. **THIS COURT ORDERS** that the time for service and filing 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 Proposed Receiver’s Report be and is hereby approved.
3. **THIS COURT ORDERS** that the First Report and the activities of the Receiver described therein be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel described in the Fee Affidavits be and are hereby approved.

5. **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.

6. **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.

---

AMERICAN IRON & METAL COMPANY INC.

- and -

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

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

**Proceedings commenced at Toronto**

**ORDER**

**AIRD & BERLIS LLP**  
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*Lawyers for A. Farber & Partners Inc., in its capacity as the Court-  
appointed Receiver*



# TAB 5

Court File No. CV-18-595577-00CL

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

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**FIRST REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER OF 1340923 ONTARIO INC. AND  
WAXMAN REALTY COMPANY INC.**

**AUGUST 3, 2018**

**INTRODUCTION**

1. This report (this “**First Report**”) is filed by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of 1340923 Ontario Inc. (“**134Co**”) and Waxman Realty Company Inc. (“**Waxman**”, and together with 134Co, the “**Debtors**”), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).
2. Farber was appointed as the Receiver pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made

June 5, 2018 (the “**Receivership Order**”). His Honour also approved a stalking horse sale process in respect of the Debtors’ real property interests (the “**Sale Process**”) pursuant to a second Order also made June 5, 2018 (the “**Sale Process Order**”). Copies of the Receivership Order, the Sale Process Order and His Honour’s endorsements made May 25, 2018 (the “**May Endorsement**”) and June 5, 2018 (the “**June Endorsement**”) are attached collectively to this First Report as **Appendix “A”**.

3. The application for the Receivership Order and the Sale Process Order was made by American Iron & Metal Company Inc. (“**AIM**”), which is: (i) a secured creditor of the Debtors; (ii) a tenant in common with the Debtors in respect of the Real Property (as defined below); and (iii) the stalking horse bidder under the Sale Process. A copy of AIM’s supporting affidavit in respect of its application, being the Affidavit of Kamila Wirpszo sworn April 11, 2018 (the “**AIM Affidavit**”), is attached to this First Report (without exhibits) as **Appendix “B”**. A copy of the report dated April 17, 2018 filed by Farber, in its capacity as the proposed Receiver (in such capacity, the “**Proposed Receiver**”), is attached to this First Report as **Appendix “C”** (the “**Proposed Receiver’s Report**”).
4. Additional background in respect of the Debtors, AIM and the Real Property is set out in the AIM Affidavit and the Proposed Receiver’s Report. In short, the Receiver understands that:
  - a. the Debtors do not have any employees, do not carry on any day-to-day business activities and do not have any substantive business other than their interests in the Real Property;
  - b. AIM is part of a group of companies that carries on business in the scrap metal and recycling industry across North America and elsewhere; and
  - c. AIM and the Debtors are parties to joint venture agreements that govern certain aspects of their tenancies in common of the Real Property, from which Real Property scrap metal yards are operated.

## PURPOSE

5. The purpose of this First Report is to: (i) advise as to the results of the Sale Process; and (ii) seek Orders:
  - a. approving the transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated June 5, 2018 between the Receiver and AIM (the “**Original Sale Agreement**”), as amended by a letter agreement dated July 31, 2018 (the “**Amendment**”, and together with the Original Sale Agreement, “**Sale Agreement**”), and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction, and vesting in AIM all the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”) free and clear of all encumbrances except for certain permitted encumbrances;
  - b. approving the amount of the BDC Credit Amount (as defined herein);
  - c. approving the Proposed Receiver’s Report and the activities of the Proposed Receiver therein;
  - d. approving this First Report and the activities of the Receiver described herein, including, without limitation, the Receiver’s interim statement of actual receipts and disbursements dated July 31, 2018; and
  - e. approving the fees and disbursements of the Receiver and its legal counsel for the period ending July 31, 2018.

## DISCLAIMER

6. This First Report has been prepared for the use of the Court and the Debtors’ stakeholders in connection with the relief being sought at paragraph 5 of this First Report. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. Neither Farber nor the Receiver will assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose.

7. In preparing this First Report, the Receiver has relied upon certain unaudited, draft and/or internal financial and other information by parties who have knowledge of the affairs of the Debtors, including AIM and the Debtors. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
8. All references to dollars in this First Report are in Canadian currency, unless otherwise noted.

## THE SALE PROCESS

9. As set out in Schedule “A” to the Sale Process Order, the purpose of the Sale Process was to identify one or more purchasers of all the Debtors’ right, title and interest in and to the following (the “**Real Property Interests**”):
  - a. the real property municipally known as 143 Adams Boulevard in Brantford, Ontario and legally described in PIN 32281-0152 (LT) (the “**Brantford Real Property**”, with the Debtors’ right, title and interest in and to the Brantford Real Property being defined as the “**Brantford Real Property Interest**”). As set out in the Proposed Receiver’s Report, AIM and 134Co are registered on title as being tenants in common, with each holding a one-half interest in the Brantford Real Property. An updated parcel page in respect of the Brantford Real Property is attached to this First Report as **Appendix “D”**. The registrations on the Brantford Real Property remain as reported in the Proposed Receiver’s Report, save and except that liens in the aggregate amount of approximately \$170,000 in favour of the Crown were registered after the issuance of the Proposed Receiver’s Report (but before the issuance of the Receivership Order). Copies of these new liens, which, by their terms, do not appear to have a priority position over existing registrations (in the case of one lien) or prescribed security interests (in the case of the other lien), are attached collectively to this First Report as **Appendix “E”**. The Receiver understands that these liens in favour of the Crown, together with previously-

registered liens on the Burlington Real Property (as defined below), have been made on the basis of notional assessments triggered by the incomplete filings and reporting by the Debtors of corporate income tax and HST returns; and

- b. the real property municipally known as 4350 Harvester Road in Burlington, Ontario and legally described in PIN 07034-0014 (LT) (the “**Burlington Real Property**”, with the Debtors’ right, title and interest in and to the Burlington Real Property being the “**Burlington Real Property Interest**”). As set out in the Proposed Receiver’s Report, AIM and Waxman are registered on title as being tenants in common, with each holding a one-half interest in the Burlington Real Property. An updated parcel page in respect of the Burlington Real Property is attached to this First Report as **Appendix “F”**. The registrations on the Burlington Real Property remain as reported in the Proposed Receiver’s Report.
10. Amongst other things, the Sale Process Order approved both the Sale Process itself and the Original Sale Agreement executed by AIM as the stalking horse bid pursuant to the Sale Process (the “**Stalking Horse Bid**”). The Sale Process Order also authorized the Receiver to execute the Original Sale Agreement and to perform its obligations thereunder. A copy of the fully-executed Sale Agreement is attached as **Appendix “G”** to this First Report, inclusive of the Amendment. The Amendment was prepared to allow for an earlier Closing Date (as defined in the Original Sale Agreement).
11. In accordance with the Sale Process Order, the Receiver set up a virtual data room in respect of the opportunity and prepared a two-page information sheet (the “**Teaser**”) containing pertinent information related to the Brantford Real Property and the Burlington Real Property (collectively, the “**Real Property**”), including details of the Real Property, the Stalking Horse Bid and the Sale Process.
12. The Teaser was sent with a form of Confidentiality Agreement (“**CA**”) to 166 potentially-interested parties via e-mail. A copy of the template CA is attached as **Appendix “H”** to this First Report. The list of parties who were sent a Teaser was comprised of:
  - a. 17 scrap metal operators with similar operations in Ontario and abroad;

- b. 148 real estate investors, private equity investors, lawyers and/or real estate brokers, as applicable, who were identified by the Receiver either through previous sale processes of real estate interests or through Farber's network of professionals and advisors in the real estate space for parties completing similar sized real estate transactions; and
  - c. NASG Canada Inc. ("NASG"). As set out in the AIM Affidavit and the Proposed Receiver's Report, NASG has asserted a constructive trust claim over some or all of the Real Property. NASG opposed the receivership application on the grounds that the Sale Process (and, in particular, the vesting component thereof) would remove NASG's proprietary interest in the Real Property Interests. The Receivership Order and the Sale Process Order were granted over NASG's objections, with His Honour concluding at paragraphs 33 and 34 of the May Endorsement that any constructive trust claim over the Real Property Interests, if any, would attach to the net proceeds from the sale of the Real Property Interests, such that vesting orders may issue upon the sale of the Real Property Interests.
- 13. The Receiver also placed the Teaser, the Stalking Horse Bid, the CA, the Sale Process terms and conditions, the Sale Process Order and other relevant public documents in the Sale Process section of its case website (<https://farbergroup.com/engagements/waxman-realty/>). The Receiver also placed a public advertisement in the Globe and Mail (national edition) on June 12, 2018, as required by the Sale Process Order.
- 14. As a result of the public advertisement of the Sale Process, one additional party contacted the Receiver to request information.
- 15. A total of four parties executed CAs and were provided access to the data room. Of those parties, two were regional competitors in the scrap metal sale and recycling industry, one was a real estate investor and one was NASG.
- 16. Interested parties had until 4:00 p.m. on July 10, 2018 (the "**Bid Deadline**") to submit offers. The Receiver received no offers before (or after) the Bid Deadline.



17. As no other offer was received, the Receiver completed the Sale Process by declaring the Stalking Horse Bid to be the winning bid for the Real Property Interests.
18. The Receiver now seeks an order vesting the Purchased Assets in and to AIM free and clear of all encumbrances, except certain permitted encumbrances, and authorizing the Receiver and AIM to complete the Transaction contemplated by the Sale Agreement.
19. The Receiver is of the view that the market has been adequately canvassed, that the Sale Agreement represents the best, highest and only offer for the Purchased Assets and that the Transaction is fair and reasonable and is for the benefit of the Debtors' stakeholders. As set out in the Proposed Receiver's Report (Appendix "C"), the Receiver arrives at this conclusion having, amongst other things, reviewed the Altus Appraisals (as defined in the Proposed Receiver's Report and sealed pursuant to Receivership Order) and the appraised values of the Real Property set out therein.
20. Provided that the Transaction closes, the Receiver intends to return to Court at a later date to make recommendations regarding the distribution of the cash component of the sale proceeds.

#### **THE BDC CREDIT AMOUNT**

21. Article 4 of the Sale Agreement provides that the Purchase Price (as defined in the Sale Agreement) of \$6,650,000 shall be allocated as follows:
  - a. \$5,000,000 for the Burlington Real Property Interest, or 75.19% of the Purchase Price; and
  - b. \$1,650,000 for the Brantford Real Property Interest, or 24.81% of the Purchase Price.
22. Article 4 of the Sale Agreement further provides that the Purchase Price shall be comprised of:
  - a. a cash deposit in the amount of \$360,000, which has already been delivered to the Receiver;



- b. a credit in the amount of \$2,336,007.10, representing all the secured debt and accrued interest thereon outstanding under the loans provided by AIM to the Debtors;
  - c. a further credit in an amount to be determined by the Receiver or this Court as recoverable by AIM from the Debtors for the discharge of the Debtors' obligations under a mortgage in favour of Business Development Bank of Canada ("**BDC**") that is registered on title to the Brantford Real Property, ahead of the mortgage in favour of AIM, in the principal amount of \$2,050,000 (the "**BDC Charge**") (collectively, the "**BDC Credit Amount**"); and
  - d. the balance to be paid in cash on closing of the Transaction ("**Closing**").
- 23. As set out in the Proposed Receiver's Report, because 134Co only holds a 50% registered ownership position in the Brantford Real Property, the Receiver's preliminary determination was that, all other things being equal, the BDC Credit Amount in favour of AIM for discharging 134Co's obligations under the BDC Charge should be 50% of the total outstanding indebtedness secured by the BDC Charge at Closing. The Receiver has since confirmed this view after having:
  - a. reviewed the agreement pursuant to which AIM acquired its 50% interest in the Brantford Real Property from 134Co, pursuant to which AIM expressly assumed 50% of the debt owing to BDC under the BDC Charge;
  - b. reviewed an indemnity agreement pursuant to which 134Co expressly agreed and undertook to indemnify AIM from all obligations and liabilities arising from or otherwise related to any amounts due to BDC over and above the above-referenced assumed obligations; and
  - c. obtained a security opinion from the Receiver's independent legal counsel, which, subject to the usual assumptions and qualifications of an opinion of such nature, confirms the validity and enforceability of the BDC Charge.

24. Effective August 14, 2018, the Receiver understands that the total amount owing to BDC under the BDC Charge (excluding BDC's legal fees and disbursements, which will be added to the BDC Charge) is \$998,112.84, such that the proposed BDC Credit Amount will be \$499,056.42 (plus half of BDC's legal fees and disbursements and accruing interest to Closing).
25. Contemporaneously with Closing, and in addition to the cash amount due by AIM to the Receiver on Closing (which is estimated to be between \$3.4 million and \$3.5 million), the Receiver understands that AIM may elect to pay directly to BDC any and all amounts owing under the BDC Charge (which BDC Charge is a permitted encumbrance under the Sale Agreement).

#### **ACTIVITIES OF THE RECEIVER**

26. The Receiver's activities since the date of the Proposed Receiver's Report include:
- a. corresponding with AIM to ensure landlord duties and responsibilities are being undertaken;
  - b. corresponding with the Debtors and AIM to obtain information about the Real Property and other due diligence materials for the preparation of the Receiver's Confidential Information Memorandum (the "CIM") and inclusion in the Receiver's virtual data room;
  - c. drafting the CIM;
  - d. implementing the Sale Process, marketing the Real Property Interests and corresponding with brokers and prospective purchasers;
  - e. corresponding with the Receiver's legal counsel regarding the matters described herein;
  - f. responding to queries from creditors and various interested parties and brokers, including AIM;

- g. corresponding with Canada Revenue Agency regarding the Debtors' liabilities to the Crown and outstanding tax reporting due;
- h. working with the Debtors and the Debtors' accounting firm to coordinate the updating of the Debtors' financial records and completing outstanding tax returns. As set out earlier in this First Report, liens have been registered on the Real Property on the basis of notional assessments triggered by the incomplete filing and reporting by the Debtors of corporate income tax and HST returns. This has resulted in late filings and reporting of three years to which the Receiver has attended;
- i. reviewing the secured claims of AIM and BDC;
- j. consulting with legal counsel to the Receiver, legal counsel to AIM, legal counsel to the Debtors and legal counsel to NASG with respect to various matters;
- k. attending to interim funding matters;
- l. arranging commercial general liability insurance effective June 5, 2018; and
- m. preparing this First Report.

#### **INTERIM RECEIPTS & DISBURSEMENTS**

27. The Receiver was granted authority in the Receivership Order to borrow up to \$75,000 for the purpose of funding the exercise of the powers and duties conferred upon the Receiver, including interim expenditures. In that regard the Receiver borrowed \$26,000 from AIM via a Receiver's Borrowing Certificate as provided for in the Receivership Order. Attached as **Appendix "I"** is the Receiver's actual interim statement of receipts and disbursements as of July 31, 2018.

#### **RECEIVER'S FEES AND DISBURSEMENTS**

28. Pursuant to paragraph 19 of the Receivership Order, the Receiver and the Receiver's legal counsel, Aird & Berlis LLP ("**A&B**"), are required to pass their accounts from time to time.

The Receiver and A&B have maintained detailed records of their time and costs relating to the receivership proceedings.

29. The Receiver has incurred fees and disbursements in the amount of \$110,381.04, plus HST of \$14,142.70, for the period to July 31, 2018. A copy of the detailed billings of the Receiver, supported by the Affidavit of Paul Denton sworn August 2, 2018, is attached hereto as **Appendix "J"**.
30. A&B has incurred fees and disbursements in the amount of \$51,251.63, plus HST of \$6,653.37, for the period to July 31, 2018. A copy of A&B's detailed billings, supported by the Affidavit of Jeremy Theodore Nemers, sworn August 1, 2018, is attached hereto as **Appendix "K"**.

#### **RECOMMENDATIONS**

31. The Receiver respectfully requests that this Honourable Court make an order granting the relief sought by the Receiver, as summarized at paragraph 5 of this First Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF AUGUST, 2018.**

**A. Farber & Partners Inc.,  
in its capacity as Court-appointed Receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc.,  
and not in its personal or corporate capacity**

Per: \_\_\_\_\_



Name: Paul J. Denton  
Title: Managing Director

33175860.5

# APPENDIX A

Court File No. CV-18-595577-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

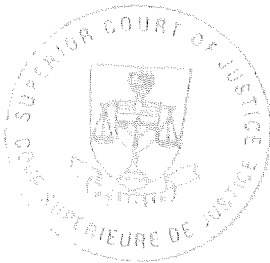
TUESDAY, THE 5th

JUSTICE PATTILLO

)

DAY OF JUNE, 2018

)



AMERICAN IRON &amp; METAL COMPANY INC.

Applicant

- and -

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Respondents

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

**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 & Partners Inc. as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1340923 Ontario Inc. and Waxman Realty Company Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard on April 20, 2018 at 330 University Avenue, Toronto, Ontario.



ON READING the affidavit of Kamila Wirpszo sworn April 11, 2018 (the "**Wirpszo Affidavit**") and the Exhibits thereto and the Report to the Court of the Proposed Receiver (the "**Proposed Receiver's Report**"), and on hearing the submissions of counsel for the applicant, the respondent, A. Farber & Partners Inc. in its capacity as proposed Receiver, NASG Canada Inc., the Business Development Bank of Canada, and litigation counsel for Waxman Industrial Services Corp., Waxman Realty Company Inc., 1340923 Ontario Inc., Aaron Waxman, Jeremy Waxman, American Iron & Metal LP and American Iron and Metal GP Inc. in the action bearing Court File No. CV-14-10606-00CL, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Margie Napolitano sworn April 12, 2018 and on reading the consent of A. Farber & Partners Inc. to act as the Receiver, and the Court having reserved until this date,

#### **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 motion 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 & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

#### **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;
- c) to manage, operate, and carry on the business of the Debtors, if any, including the powers to enter into any agreements, incur any obligations in the ordinary course of business,
- d) to cease to carry on all or any business, or cease to perform any contracts of the Debtors;
- e) 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;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g) to settle, extend or compromise any indebtedness owing to the Debtors;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or any of them, 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 Debtors, or any of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- 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,
- (i) without the approval of this Court in respect of any transaction not exceeding \$5,000, provided that the aggregate consideration for all such transactions does not exceed \$25,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- 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 Debtors;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or any of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- s) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

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

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property 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 records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 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 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 DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with

leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors 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 Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, or any of them, 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 Debtors, or any of them, 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 Debtors 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 Debtors' 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 Debtors 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 and shall not be distributed to anyone without further order of the Court and on seven days notice to all parties who have served a notice of appearance in this proceeding.

#### **EMPLOYEES**

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

#### **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

16. 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 (an "**Encumbrance**"), in favour of any Person, provided however, that the Receiver's Charge shall rank immediately behind in priority to any valid and enforceable Encumbrance in favour of Business Development Bank of Canada on or over the Property (the "**BDC Encumbrance**"), and the Receiver's Charge shall be 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.

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

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$75,000 (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 Encumbrances, in favour of any Person, but subordinate in priority to the BDC Encumbrance and 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/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://farbergroup.com/engagements/waxman-realty>.

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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

**GENERAL**

27. THIS COURT ORDERS that the Confidential Appendices to the Proposed Receiver's Report be and are hereby sealed pending further Order of this Court.

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 Debtors.

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 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.

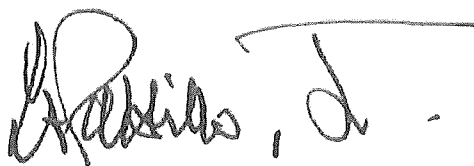
32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates 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.

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

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

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

34. THIS IS TO CERTIFY that A. Farber & Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 1340923 Ontario Inc. and Waxman Realty Company Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 25<sup>th</sup> day of May, 2018 (the "Order") made in an action having Court file number CV-18-595577-00CL, 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.

35. 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.

36. 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.

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

38. 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.

39. 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.

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

Per: \_\_\_\_\_

Name:

Title:

**AMERICAN IRON & METAL COMPANY  
INC.**  
Applicant

and

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

Court File No: CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

**McMILLAN LLP**  
Brookfield Place  
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Lawyers for the Applicant

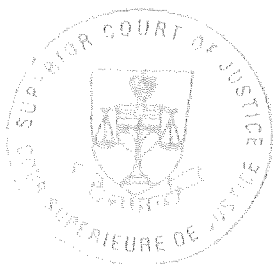




Court File No. CV-18-595577-00CL

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

<b>THE HONOURABLE MR.</b>  <b>JUSTICE PATTILLO</b>	) ) )	<b>TUESDAY, THE 5th</b>  <b>DAY OF JUNE, 2018</b>
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**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and**  
**WAXMAN REALTY COMPANY INC.**

Respondents

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

**ORDER**  
**(Sale Process)**

THIS APPLICATION made by the Applicant for, among other things, approval of the stalking horse sale process appended as Schedule "A" hereto (the "**Sale Process**") to be administered by A. Farber & Partners Inc. ("**Farber**"), in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of all the assets, undertakings and properties of the Respondents (the "**Debtors**"), was heard on April 20, 2018 at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kamila Wirpszo sworn April 11, 2018 (the "**Wirpszo Affidavit**") and the Exhibits thereto, the Report to the Court of the Proposed

Receiver (the “**Proposed Receiver’s Report**”), and the unredacted Stalking Horse Agreement (as defined below) filed with the Court, and on hearing the submissions of counsel for the applicant, the respondent, A. Farber & Partners Inc. in its capacity as proposed Receiver, NASG Canada Inc., the Business Development Bank of Canada, and litigation counsel for Waxman Industrial Services Corp., Waxman Realty Company Inc., 1340923 Ontario Inc., Aaron Waxman, Jeremy Waxman, American Iron & Metal LP and American Iron and Metal GP Inc. in the action bearing Court File No. CV-14-10606-00CL, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Margie Napolitano sworn April 12, 2018, and the Court having reserved until this date,

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record of the Applicant is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Sale Process be and is hereby approved and the Receiver be and is hereby authorized to conduct the Sale Process, including, without limitation and if applicable, the Auction (as defined in the Sale Process), and to perform its obligations thereunder.
3. THIS COURT ORDERS that the asset purchase agreement executed by the Applicant, substantially in the form attached in redacted form as Schedule “B” hereto (the “**Stalking Horse Agreement**”), be and is hereby approved as the Stalking Horse Bid (as defined in the Sale Process).
4. THIS COURT ORDERS that the Receiver be and is hereby authorized to execute the Stalking Horse Agreement and to perform its obligations thereunder.
5. THIS COURT ORDERS that the Break Fee provided for (and defined) in the Stalking Horse Agreement (in the amount of \$150,000) be and is hereby approved, and that the Receiver is authorized and directed to pay the Break Fee to the Stalking Horse


Bidder forthwith in the event that such Break Fee becomes owing pursuant to the terms and conditions of the Stalking Horse Agreement.

6. THIS COURT ORDERS that to secure the Receiver's obligations to pay the Break Fee, as provided for in paragraph 5 of this Order, the Stalking Horse Bidder is hereby granted a first ranking priority charge over the Real Property Interests (as defined in the Sale Process) up to an amount not exceeding the amount of \$150,000.

#### GENERAL

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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

8. 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.

  
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**SCHEDULE "A"**



## STALKING HORSE SALE PROCESS

### Purpose

1. The within stalking horse sale process (the “**Stalking Horse Sale Process**”) will be conducted by A. Farber & Partners Inc. in its capacity as court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Ontario Inc. (together with Waxman, the “**Debtors**”), in consultation with the Debtors’ stakeholders, as the Receiver deems appropriate. The purpose of the Stalking Horse Sale Process is to identify one or more purchasers of all the Debtors’ right, title and interest in and to (and only to the extent of all the Debtors’ right, title and interest in and to) (collectively, the “**Real Property Interests**”): (i) the real property municipally known as 143 Adams Boulevard in Brantford, Ontario and legally described in PIN 32281-0152 (LT); and (ii) the real property municipally known as 4350 Harvester Road in Burlington, Ontario and legally described in PIN 07034-0014 (LT).
2. Unless otherwise indicated herein, any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.

### Sale Process Procedures

3. The Receiver will compile a list of prospective purchasers (together with any other party expressing an interest in the Real Property Interests, the “**Interested Parties**”). The Receiver will make best efforts to canvass the interest of all Interested Parties.
4. The Sale Process will be conducted by the Receiver and will provide Interested Parties with the opportunity to submit offers to purchase the Real Property Interests.
5. The Receiver shall cause a notice of the Stalking Horse Sale Process to be published in The Globe and Mail (National Edition), as well as any other publications as the Receiver may deem appropriate, within five (5) days following the issuance an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) approving the Stalking Horse Sale Process (the “**Stalking Horse Sale Process Order**”), or as soon as practicable thereafter.

6. After the issuance of the Stalking Horse Sale Process Order, the Receiver will distribute to Interested Parties an interest solicitation letter (the “**Teaser**”) which will provide an overview of the opportunity to purchase the Real Property Interests. A form of confidentiality agreement (“**CA**”) will be attached to the interest solicitation letter that Interested Parties will be required to sign in order to gain access to confidential information and to commence performing due diligence (each Interested Party who signs a CA being referred to herein as, a “**Prospective Offeror**”).
7. The Receiver will provide to each Prospective Offeror access to an electronic data room (which will include certain financial and other information with respect to the Real Property Interests). The Receiver will also facilitate diligence by Prospective Offerors, including arranging site visits.
8. Information pertaining to the Stalking Horse Sale Process will be posted on the Receiver's website, including the within Stalking Horse Sales Process Terms, the Stalking Horse Sale Process Order, a CA and the Agreement of Purchase and Sale, dated June 4, 2018 (the “**Stalking Horse Bid**”), between the Receiver and American Iron & Metal Company Inc. (“**AIM**” or the “**Stalking Horse Bidder**”).
9. The Receiver shall have the right to limit any Prospective Offeror's access to confidential information. This will include limiting access, if deemed appropriate, to parties who the Receiver reasonably believes are not likely to be serious offerors.

#### **Submission of Offers**

10. In order to be accepted by the Receiver, any competing bid (each, a “**Competing Bid**”) for the Real Property Interests must be on substantially the same terms and conditions as those contained in the Stalking Horse Bid, except with respect to the Purchase Price (as defined in the Stalking Horse Bid). Any Competing Bid accepted by the Receiver as a superior bid to the Stalking Horse Bid is, in each case, a “**Superior Bid**”.
11. The Receiver shall, in its sole discretion, determine whether any Competing Bid is a Superior Bid, provided that no Competing Bid shall qualify as a Superior Bid unless it meets the following minimum criteria:



- (a) it must be received by the Receiver, in its entirety, by no later than the Bid Deadline (as set out in the Sale Process Timeline below);
  - (b) it must be submitted in the form of a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid;
  - (c) it must be accompanied by a cash deposit (the “**Deposit**”) in an amount equal to the sum of ten percent of the aggregate purchase price of such Competing Bid by way of certified cheque or wire, payable pursuant to the terms of such Competing Bid, and which is not subject to any encumbrances;
  - (d) it must remain open for acceptance and completion until approval by the Court of an agreement of purchase and sale in respect of the Real Property Interests;
  - (e) it must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;
  - (f) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder's obligation to close that are not otherwise contained in the Stalking Horse Bid;
  - (g) it must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by such Competing Bid on the terms specified therein; and
  - (h) it must be for an aggregate purchase price at least equal to the sum of the Purchase Price (as defined in the Stalking Horse Bid) plus the Break Fee (as defined in the Stalking Horse Bid) and an additional minimum increment of \$25,000.
12. The Deposit will be refunded in the event a Competing Bid, as submitted, is not accepted by the Receiver or if a party who submitted a Superior Offer is not the Winning Bidder (defined below).

**The Winning Bid and Auction Process**

13. In the event that one or more Superior Bid is lodged with the Receiver in accordance with the terms hereof, the Receiver will distribute the following documentation by no later than 5:00 p.m. (Toronto time) on July 12, 2018 to the Stalking Horse Bidder and the maker(s) of each Superior Bid:
  - (a) an invitation to an auction of the Real Property Interests to be held on or before 5:00 p.m. (Toronto time) on July 13, 2018 at the offices of the Receiver (the **"Auction"**);
  - (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all the Superior Bids (the **"Lead Bid"**); and
  - (c) a copy of a set of rules for the conduct of the Auction, to be established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Real Property Interests (the **"Auction Rules"**), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than \$50,000; and (iii) the highest bid received at the Auction shall be the winning bid (the **"Winning Bid"**).
14. Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the **"Winning Bidder"**) and the Receiver (the **"Winning Bid Agreement"**), in which case the Winning Bid Agreement shall be constituted by:
  - (a) the Stalking Horse Bid or the agreement of purchase and sale submitted to the Receiver by the Winning Bidder, as the case may be, and as amended pursuant to the Auction; and
  - (b) the acceptance of the Winning Bid.

15. In the event that there is no Superior Bid lodged with the Receiver in accordance with the terms hereof, the Stalking Horse Bid and the Stalking Horse Bidder shall be declared to be the Winning Bid, the Winning Bid Agreement and the Winning Bidder, as applicable.
16. Once the Winning Bid Agreement is determined, the Receiver will bring a motion to the Court seeking approval of the Winning Bid Agreement, vesting the Real Property Interests in and to the Winning Bidder and authorizing the Receiver to undertake such actions as may be necessary or appropriate to carry out the sale transaction.

#### Other Terms

17. At any time during the Sale Process, the Receiver may, upon reasonable notice to the service list, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.
18. The sale of the Real Property Interests is strictly on an "as is, where is" basis.
19. Other than as provided in the Stalking Horse Bid, no other party shall be paid any break, termination or similar fee. For greater certainty, all Interested Parties, bidders and the Winning Bidder shall be responsible for their own fees, including legal fees, and costs relating to any transaction.
20. The Receiver, in consultation with AIM, may amend, supplement or terminate this sale procedure.

#### Sale Process Timeline

	Event	Timing
1.	Compile a list of interested parties through consultation with the Debtors and the Farber network of advisors and investors in the real estate sector	On or before June 5, 2018
2.	Send a teaser (the "Teaser") and confidentiality agreement ("CA") to all parties identified by Farber and the Debtors as potentially having an interest in the purchased assets (the "Purchased Assets").	Within 2 business days of issuance of the Stalking Horse Sale Process Order (referred to as the "Sale Process Order")

	Event	Timing
3.	<p>Information pertaining to this opportunity will be posted on the Receiver's website: <a href="http://www.farbergroup.com">www.farbergroup.com</a> which will include:</p> <ul style="list-style-type: none"> <li>• A copy of the Stalking Horse Agreement of Purchase and Sale between the Receiver and American Iron &amp; Metal Company Inc. (the "<b>Purchaser</b>");</li> <li>• The Stalking Horse Sales Process and related terms and conditions;</li> <li>• The Sale Process Order; and</li> <li>• A CA from the Receiver.</li> </ul>	Within 2 business days of issuance of the Sale Process Order
4.	The Proposal Trustee shall advertise the Real Property Interests and Sale Process in <i>The Globe &amp; Mail</i> (National Edition).	Within 5 business days of the Sale Process Order
5.	Interested Parties expressing an interest in participating in the Stalking Horse Sale Process will be required to execute the CA, upon which execution Interested Parties will receive available information in respect of the Purchased Assets and Stalking Horse Sale Process, including access to the Receiver's virtual data room, once established, which will also include a Confidential Information Memorandum (" <b>CIM</b> ") setting out the purchase opportunity. In addition, parties wishing to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the virtual data room. Any such sites visits are to be coordinated through the Receiver.	Through to no later than July 10, 2018
6.	<p>Interested Parties will have until 4:00 pm Eastern Daylight Time, on Tuesday, July 10, 2018 (the "<b>Bid Deadline</b>") to submit competing bids (hereinafter called "<b>Competing Bids</b>"), each of which must be pursuant to the Stalking Horse Bidding Procedures and, amongst other matters, will include a cash deposit equal to 10% of the Interested Party's Bid for the Real Property Interests (the "<b>Deposit</b>"). The Deposit will be refunded in the event an Offer, as submitted, is not accepted by the Receiver.</p> <p>Competing Bids are to be made using the Stalking Horse Agreement of Purchase and Sale ("<b>APS</b>") template and are to be without conditions, other than a condition for Court Approval.</p>	On or before 4:00 PM (EDT), July 10, 2018

	Event	Timing
7.	<p>In the event one or more superior bids (“<b>Superior Bids</b>”) are lodged with the Receiver, in accordance with the Sale Process Order, the Receiver will distribute the following documents by no later than 5:00 p.m. EDT on July 12, 2018 to the Purchaser and each party that makes a Superior Bid:</p> <ul style="list-style-type: none"> <li>• An invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. on July 13, 2018;</li> <li>• A copy of the bid that the Receiver, in its sole and unfettered discretion, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “<b>Lead Bid</b>”);</li> <li>• A copy of a set of rules for the Auction established by the Receiver acted in its sole and unfettered discretion with a view of maximizing the purchase price of the Purchased Assets</li> </ul> <p>In the event the Receiver selects a Competing Bid at the Auction, there shall be a binding agreement of purchase and sale between the winning bidder (“<b>Winning Bidder</b>”), while the Stalking Horse bidder will be paid the Break Fee following the closing of the sale with the Winning Bidder.</p>	On or prior to 5:00 p.m. EDT on July 13, 2018.
8.	In the event there is no Superior Bid lodged with the Receiver, the Purchaser shall be declared the Winning Bidder.	On or prior to July 13, 2018
9	Once the Winning Bid Agreement is determined (either item 7 or 8) the Receiver will make a motion to Court to obtain an Approval and Vesting Order on or prior to August 3, 2018	On or prior to August 3, 2018
11	Closing of the sale with the Winning Bidder on or prior to August 17, 2018.	On or prior to August 17, 2018

**SCHEDULE "B"**

**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN**

**A. FARBER & PARTNERS INC.,**  
solely in its capacity as the Court-appointed receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc., and  
not in its personal capacity or in any other capacity

- and -

**AMERICAN IRON & METAL COMPANY INC.**

Dated: June 5, 2018

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## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 5th day of June, 2018.

**BETWEEN:**

**A. FARBER & PARTNERS INC.,**  
solely in its capacity as the Court-appointed receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc., and  
not in its personal capacity or in any other capacity

(in such capacity, the “Receiver”)

- and -

**AMERICAN IRON & METAL COMPANY INC.**  
(the “Purchaser”)

**WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on May 25, 2018 (the “Receivership Order”), A. Farber & Partners Inc. (“Farber”) was appointed as the Receiver, without security, of all the assets, undertakings and properties of Waxman Realty Company Inc. (“Waxman”) and 1340923 Ontario Inc. (“134Co.”, and together with Waxman, the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof;

**AND WHEREAS** pursuant to the provisions of the Receivership Order, the Receiver has the power to sell all or any part of the Property (as defined below), subject to Court approval;

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

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

### ARTICLE 1 DEFINED TERMS

#### 1.1 Definitions.

In this Agreement:

“Accounts Payable” means all amounts owing by the Debtor to any Person incurred in connection with the purchase of goods or services in the ordinary course of the Business;

**"Agreement"** means this agreement of purchase and sale, including all schedules herein, and references to **"article"**, **"section"** or **"schedule"** mean the specified article of, section of, or schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and, unless otherwise stated, not to any particular section or other portion of this Agreement;

**"Applicable Law"** means, with respect to the Purchased Assets and any Person, property, transaction, event or other matter, all laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority having the force of law relating to or applicable to such Purchased Assets, Person, property, transaction, event or other matter;

**"Approval and Vesting Order"** means the approval and vesting order issued by the Court approving this Agreement and the Transaction contemplated by this Agreement and conveying to the Purchaser all the Debtor's right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule "A"** hereto;

**"Assignable Assets"** has the meaning given in Section 3.1(3) herein;

**"Assumption Agreement"** has the meaning given in Section 15.10 herein;

**"Auction"** has the meaning given in Section 6.3 herein;

**"Auction Rules"** has the meaning given in Section 6.3 herein;

**"BDC"** means Business Development Bank of Canada;

**"BDC Charge"** means the Charge in favour of BDC registered as Instrument No. BC116723 on title to those parts of the Real Property municipally known as 143 Adams Boulevard, Brantford, Ontario;

**"Brantford Property"** means those lands and premises known municipally and legally described under the heading **"Brantford Property"** in **Schedule "C"** hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and enuring to the benefit thereof; and (ii) all buildings, improvements and structures thereon and the Fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

**"Break Fee"** means \$150,000 payable to the Purchaser in accordance with Section 6.1 herein;

**"Burlington Property"** means those lands and premises known municipally and legally described under the heading **"Burlington Property"** in **Schedule "C"** hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and enuring to the benefit thereof; and (ii) all buildings, improvements and structures thereon and the Fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

**"Business"** means the business carried on by the Debtor;

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

**“Chattels”** means all equipment, machinery, inventory, supplies and other chattels and tangible personal property located at, situated upon or used in connection with the Real Property;

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

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

**“Closing Date”** means the date that is the later of: (i) the first Business Day following the date that is ten (10) days following the date on which the Approval and Vesting Order is granted; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined;

**“Closing Deliveries”** means the agreements, instruments and other documents and items to be delivered by the Receiver to the Purchaser or the Purchaser’s Solicitors pursuant to Section 7.3 herein and the agreements, instruments, monies and other documents and items to be delivered by the Purchaser to the Receiver or the Receiver’s Solicitors pursuant to Section 7.4 herein;

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

**“Competing Bid”** has the meaning given in Section 6.2 herein;

**“Contracts”** means all the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party or has an interest in pursuant to the Joint Venture Agreements;

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

**“CRA”** means Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue;

**“CRA Liens”** means, collectively, the Liens in favour of the CRA registered as Instrument Nos. HR1446119 and HR1446123 on title to those parts of the Real Property municipally known as 4350 Harvester Road, Burlington, Ontario;

**“Credit Bid Amount”** means the sum of TWO MILLION THREE HUNDRED THIRTY-SIX THOUSAND SEVEN DOLLARS AND TEN CENTS (\$2,336,007.10) which represents all the debt and accrued interest thereon outstanding under the loans provided by the Purchaser to the Debtor, which loans are secured by the Security, and are being credit bid by the Purchaser.

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

**“Deposit”** has the meaning given in Section 4.2 herein;

**“DRA”** has the meaning given in Section 7.6 herein;

**“Encumbrances”** means any charge, mortgage, lien, pledge, Claim, restriction, restrictive covenant, security interest, debenture, hypothec, prior claim, trust deed, assignment by way of security, conditional sale contract or other title retention agreements or similar interests or instruments, easement, right of way, development or like agreement, license, lease, defect, encroachment or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights, whether registered or unregistered, and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario;

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

**“Excluded Assets”** means the Debtor’s right, title and interest in and to the following:

- (a) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor;
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate or credit of Taxes for the period prior to the Closing Date; and
- (c) any other Property that is not included in the definition of Purchased Assets;

**“Excluded Liabilities”** has the meaning given in Section 3.3 herein;

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

**“Fixtures”** means all fixtures of every nature and kind incorporated in, situate upon and used in connection with the Real Property, including heating, ventilating, air-conditioning, plumbing, electrical, sprinkler and drainage systems but specifically excluding any fixtures and other tangible personal property covered by any equipment lease or owned by any Tenant;

**“Governmental Authority”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts,

bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means harmonized sales tax imposed under Part IX of the ETA;

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

**"Joint Venture Agreements"** means, collectively, the joint venture agreement between Waxman, American Iron & Metal LP and American Iron & Metal GP Inc. and the joint venture agreement between 134Co., American Iron & Metal LP and American Iron & Metal GP Inc., each dated December 14, 2012, as same may be amended from time to time;

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

**"Lead Bid"** has the meaning given in Section 6.3 herein;

**"Leases"** means all executed and subsisting offers to lease, agreements to lease, leases, renewals of leases, tenancy agreements, rights of occupation, licences or other occupancy agreements granted by or on behalf of the Debtor and/or American Iron & Metal LP and American Iron & Metal GP Inc. (or any of their successors or assigns) or any of their predecessors in title to possess or occupy space within the Real Property or any part thereof now or hereafter, together with all security, guarantees and indemnities of the Tenants' obligations thereunder, in each case as amended, extended, renewed or otherwise modified;

**"Notice"** has the meaning given in Section 15.3 herein;

**"Parties"** means the Receiver and the Purchaser;

**"Permits"** means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Purchased Assets;

**"Permitted Encumbrances"** means all those Encumbrances described in **Schedule "B"** hereto;

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

**"Personal Property Leases"** means all leases of personal or moveable property that relate to the Business, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof;

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

**“Purchase Price”** has the meaning set out in Section 4.1 herein;

**“Purchased Assets”** means all of the Debtor’s right, title and interest in and to:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Contracts, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;
- (d) the Warranty Rights, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;
- (e) the Chattels;
- (f) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (g) the Leases;

**“Purchaser”** means American Iron & Metal Company Inc., a corporation duly formed and validly subsisting under the federal laws of Canada;

**“Purchaser’s Solicitors”** means McMillan LLP;

**“Real Property”** means collectively, the Burlington Property and the Brantford Property;

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

**“Receiver’s Certificate”** has the meaning given in Section 7.5 herein;

**“Receiver’s Solicitors”** means Aird & Berlis LLP;

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

**“Registry Office”** has the meaning given in Section 7.1 herein;

**“Rights”** has the meaning given in Section 3.1(3) herein, but only has such meaning in such section;

**“Sale Process”** has the meaning given in Section 6.1 herein;

**“Sale Process Orders”** has the meaning given in Section 6.1 herein;



**“Security”** means the security interest granted by the Debtor in favour of the Purchaser over all the Debtor’s present and after acquired real and personal property;

**“Stalking Horse Bid”** has the meaning given in Section 6.1 herein;

**“Superior Bid”** has the meaning given in Section 6.2 herein;

**“Taxes”** means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

**“Tenant”** means any Person entitled to occupy premises located on the Real Property pursuant to a Lease;

**“TERS”** has the meaning given in Section 7.6 herein;

**“Third Party”** has the meaning given in Section 3.1 herein;

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

**“Warranty Rights”** means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Debtor against manufacturers, contractors or any other Person which apply to the Real Property, but only to the extent that the same are capable of being assigned;

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

**“Winning Bid”** has the meaning given in Section 6.3 herein; and

**“Winning Bid Agreement”** has the meaning given in Section 6.3 herein.

## ARTICLE 2 SCHEDULES

### 2.1 Schedules.

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

<u>Schedule</u>	<u>Description</u>
Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Real Property
Schedule D	Claims

**ARTICLE 3**  
**AGREEMENT TO PURCHASE**

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

- (1) Relying on the representations and warranties herein, and subject to Article 6 herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all its rights, claims and demands whatsoever in the Purchased Assets.
- (3) Without in any way limiting the obligations of the Receiver to use reasonably best-effort to obtain consents to assignments as contemplated in this Agreement, this Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(3), collectively, the “**Rights**”) under any Permits, Contracts or Warranty Rights (collectively, the “**Assignable Assets**”) which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
  - (a) the Receiver will, at the request, direction and sole cost of the Purchaser, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required in respect of the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;
  - (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser; and
  - (c) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

**3.2 Excluded Assets.**

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### 3.3 Excluded Liabilities.

Other than any liabilities under the BDC Charge, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Real Property or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

### 3.4 BDC Charge

The Purchaser agrees to assume the BDC Charge on Closing at its sole cost and expense.

## ARTICLE 4

### PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

#### 4.1 Purchase Price.

Subject to Article 6 herein, the purchase price for the Purchased Assets shall be the aggregate of [REDACTED] (the "**Purchase Price**").

#### 4.2 Deposit.

- (1) Within two (2) Business Days of the date of this Agreement, the Purchaser shall pay the Receiver a deposit by certified cheque or wire of THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00) (the "**Deposit**"), which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other

termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account, which Deposit and interest shall accrue to the benefit of the Purchaser from the date of this Agreement until the Closing Date or other termination of this Agreement and shall be credited to the Purchaser on the Closing Date.

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

Subject to Article 6 herein, the Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit, and any interest accrued thereon, shall be applied against the Purchase Price;
- (b) a credit in the amount of the Credit Bid Amount;
- (c) a credit in an amount determined by the Receiver or the Court as recoverable by the Purchaser from the Debtor for the discharge of the BDC Charge; and
- (d) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit and credits set out in subsection 4.3(b) and (c) above, shall be paid by the Purchaser to the Receiver's Solicitors on Closing.

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

- (1) The Purchase Price shall be allocated as follows:

- (a) [REDACTED] for Purchased Assets consisting of, located on or used in connection with the Burlington Property; and
- (b) [REDACTED] for the Purchased Assets consisting of, located on or used in connection with the Brantford Property.

- (2) Subject to Section 4.4 above, with respect to each of the Burlington Property and the Brantford Property, the Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

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

- (1) There shall be no adjustments to the Purchase Price.

## ARTICLE 5 TAXES

### 5.1 Taxes.

Provided that the Purchaser is selected as the Winning Bidder, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

## ARTICLE 6 SALE APPROVAL PROCEEDINGS

### 6.1 The Sale Process.

Each of the Parties acknowledges and agrees that by no later than June 5, 2018, the Receiver shall obtain orders (collectively, the "**Sale Process Orders**") from the Court which, *inter alia*, set out the terms and conditions of and a timetable for a bidding, auction and sale process with respect to the Purchased Assets (the "**Sale Process**"). The Sale Process Orders shall recognize this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), and shall also provide for a marketing process of the Purchased Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver. The Purchaser acknowledges and agrees that the aforementioned Sale Process is in contemplation of determining whether a materially higher price than that contemplated in the Stalking Horse Bid can be obtained for the Purchased Assets.

In consideration for the Purchaser's expenditure of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, the Sale Process Orders shall also provide for liquidated damages in the amount of the Break Fee, payable by the Receiver to the Purchaser in the event that a materially higher offer than the Purchase Price advanced by the Purchaser pursuant to the terms herein is obtained for the Purchased Assets through the Sale Process and, as a consequence, the Receiver sells all or substantially all the Purchased Assets to a person or entity other than the Purchaser.

In the event that the Stalking Horse Bid is not chosen to be the Winning Bid, the Break Fee shall be payable to the Purchaser from the sale proceeds derived from the Winning Bid. Each of the Parties acknowledges and agrees that the Break Fee represents a fair and reasonable estimate of the costs and damages which will be incurred by the Purchaser as a result of non-completion of this Agreement, and is not intended to be punitive in nature or to discourage competitive bidding for the Purchased Assets.

## 6.2 Competing Bids.

In addition to the foregoing, the Sale Process Orders shall also provide that in order to be accepted by the Receiver, any competing bid (each, a “**Competing Bid**”) for the Purchased Assets must be on substantially the same terms and conditions as the terms and conditions contained in this Agreement, except with respect to the Purchase Price (any Competing Bid accepted by the Receiver as a superior bid to the Stalking Horse Bid being, in each case, a “**Superior Bid**”).

In order for any Competing Bid to be accepted by the Receiver as a Superior Bid, such Competing Bid must meet all the following minimum criteria:

- (a) it must be received by the Receiver, in its entirety, by no later than 4:00 p.m. (Toronto time) on July 10, 2018;
- (b) it must be accompanied by a duly executed agreement of purchase and sale, blacklined against this Agreement, showing any and all variations from this Agreement, and a deposit in an amount equal to the sum of ten percent of the aggregate purchase price in such Competing Bid by way of certified cheque or wire, payable pursuant to the terms of such Competing Bid, and which is not subject to any encumbrances;
- (c) it must remain open for acceptance and completion until 11:59 p.m. (Toronto time) on August 3, 2018;
- (d) it must be on terms no less favourable and no more burdensome or conditional than the terms of this Agreement;
- (e) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder’s obligation to close that are not otherwise contained in this Agreement;
- (f) it must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by such Competing Bid on the terms specified therein; and
- (g) it must be for an aggregate purchase price at least equal to the sum of the Purchase Price plus the Break Fee plus a minimum overbid of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

## 6.3 The Winning Bid and the Auction Process.

In the event that one or more Superior Bid is lodged with the Receiver in accordance with Section 6.2 hereof, the Sale Process Orders shall provide that the Receiver will distribute the following documentation by no later than 5:00 p.m. (Toronto time) on July 12, 2018 to the Purchaser and the maker(s) of each Superior Bid:

- (a) an invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. (Toronto time) on July 13, 2018 at the offices of the Receiver (the "**Auction**");
- (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all the Superior Bids (the "**Lead Bid**"); and
- (c) a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Purchased Assets (the "**Auction Rules**"), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus the Break Fee, solely for the purpose of determining the successful bid at the Auction; and (iii) the highest bid received at the Auction shall be the "winning bid" (the "**Winning Bid**").

In the event that the Receiver selects any Competing Bid as the Winning Bid, the Sale Process Orders shall provide the Receiver will pay the Break Fee to the Purchaser immediately upon receipt of the sale proceeds on closing of the Winning Bid.

Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the "**Winning Bidder**") and the Receiver (the "**Winning Bid Agreement**"), in which case the Winning Bid Agreement shall be constituted by:

- (a) this Agreement or the agreement of purchase and sale submitted to the Receiver by the Winning Bidder, as the case may be, and as amended pursuant to the Auction; and
- (b) the acceptance of the Winning Bid.

In the event that there is no Superior Bid lodged with the Receiver in accordance with Section 6.2 hereof, the Sale Process Orders shall provide that this Agreement and the Purchaser shall be declared to be the Winning Bid, the Winning Bid Agreement and the Winning Bidder, as applicable.

Once the Winning Bid Agreement is determined, the Receiver will make a motion to the Court in order to obtain the Approval and Vesting Order.

#### **6.4 Court-Specified Time Periods.**

Where any of the time periods specified in Sections 6.1 through 6.3 of this Agreement are subject to be established by Court Order, and in the event that the Court establishes a date different than the date set out in this Agreement, then the corresponding date established by such provisions of this Agreement shall be deemed to be amended to accord with the Court established date, provided that no such amendment shall be deemed to have occurred without the express written consent of the Purchaser if the effect of such amendment is to delay the Closing Date by any period greater than 15 days.

### **ARTICLE 7 CLOSING ARRANGEMENTS**

#### **7.1 Closing and Closing Procedure.**

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's Solicitors, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing. Subject to Section 7.6 hereof, on the Closing Date, all Closing Deliveries and monies shall be delivered at the office of the Receiver's Solicitors, held in escrow and released upon satisfaction of such terms as the Receiver and the Purchaser shall both determine, acting reasonably (such terms shall include registration of the Application for Vesting Order in the relevant land registry office (the "**Registry Office**")). In the event that the Registry Office is not open for business on the Closing Date, then the Closing Date shall be deemed to be the day next following on which the Registry Office is open for business.

#### **7.2 Tender.**

The following provisions shall govern any tender to be made by either party to this Agreement:

- (1) any tender of documents under this Agreement may be made personally or by facsimile or PDF;
- (2) monies, other than the Deposit (which must be tendered by a certified cheque or by a bank draft, either to be drawn upon one of Canada's five largest Schedule 1 chartered banks), must be tendered by wire transfer of immediately available funds to the account specified by the receiving Party;
- (3) neither of the Parties shall be obligated to attend personally upon the other or the other's solicitors with the Closing Deliveries;
- (4) notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Receiver upon the Purchaser when the Receiver's Solicitors have:
  - (a) delivered all Closing Deliveries required to be delivered by the Receiver to the Purchaser pursuant to Section 7.3 herein;



- (b) advised the Purchaser's Solicitors in writing that the Receiver is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
  - (c) completed all steps required by TERS to complete this Transaction that can be performed or undertaken by the Receiver's Solicitors without the cooperation or participation of the Purchaser's Solicitors; and
- (5) notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Purchaser upon the Receiver, when the Purchaser's Solicitors have:
- (a) delivered the balance due at Closing and all the Closing Deliveries required to be delivered by the Purchaser to the Receiver pursuant to Section 7.4 herein;
  - (b) advised the Receiver's Solicitors in writing that the Purchaser is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
  - (c) completed all steps required by TERS to complete this Transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Receiver's Solicitors.

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

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser's Solicitors at Closing or on such other date as expressly provided herein, all in a form satisfactory to the Purchaser, acting reasonably:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate executed by the Receiver;
- (2) a final statement of adjustments prepared in accordance with Section 4.5 hereof;
- (3) an assignment and assumption agreement for all Leases relating to the period from and after the Closing Date;
- (4) an assumption statement and mortgage assumption agreement relating to the BDC Charge;
- (5) subject to Section 3.1(3) hereof, an assignment and assumption agreement for all Contracts, Warranty Rights and Permits (in each case, to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser in accordance with the terms and conditions of Section 3.1(3) hereof;
- (6) a certificate from the Receiver, dated as of the Closing Date, certifying:

- (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
  - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
  - (c) the non-merger specified in Section 15.2 and elsewhere herein; and
- (7) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 herein has been fulfilled, performed or waived as of the Closing Time.

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

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver's Solicitors at Closing or on such other date as expressly provided herein, all in a form satisfactory to the Receiver, acting reasonably:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (2) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with, and together with the other deliverables required by the terms and conditions of Section 5.1 hereof;
- (3) an assignment and assumption agreement for all Leases relating to the period from and after the Closing Date;
- (4) a mortgage assumption agreement relating to the BDC Charge;
- (5) subject to Section 3.1(3) hereof, an assignment and assumption agreement for all Contracts, Warranty Rights and Permits (in each case, to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser in accordance with the terms and conditions of Section 3.1(3) hereof;
- (6) a certificate from the Purchaser, dated as of the Closing Date, certifying:
  - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
  - (b) the non-merger specified in Section 15.2 and elsewhere herein; and

- (7) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.3 herein has been fulfilled, performed or waived as of the Closing Time.

#### **7.5 Receiver's Certificate.**

Upon receipt of written confirmation from the Purchaser that all the conditions contained in Section 8.3 herein have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all the conditions contained in Section 8.1 herein, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order (the "**Receiver's Certificate**"), and shall file same with the Court.

#### **7.6 Electronic Registration.**

In the event that the electronic registration system ("**TERS**") is operative in the Registry Office, the following provisions shall apply:

- (1) the Receiver and the Purchaser hereby authorize the Receiver's Solicitors and the Purchaser's Solicitors, respectively, to enter into a document registration agreement with the other Party's solicitor (the "**DRA**"), establishing the procedures and timing for completing this Transaction, provided that the DRA shall in no way be inconsistent with any of the terms or conditions of this Agreement; and
- (2) the delivery and exchange of the Closing Deliveries:
  - (a) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
  - (b) shall be governed by the DRA, pursuant to which the Receiver's Solicitors and Purchaser's Solicitors shall hold all Closing Deliveries in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.

### **ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING**

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

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

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;

- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order.

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

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

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

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

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

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Receiver contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (3) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (4) the Purchaser obtaining the consent of the BDC to assume the BDC Charge on Closing;
- (5) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (6) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order.

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

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

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

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

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

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Sale Process Orders and the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and, subject to the Sale Process Orders and the Approval and Vesting Order, convey all right, title and interest of the Debtor in and to the Purchased Assets; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

### **ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

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

- (1) the Purchaser is a corporation duly formed and validly subsisting under the federal laws of Canada;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the

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

- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date.

## **ARTICLE 11 COVENANTS**

### **11.1 Mutual Covenants.**

Subject to Article 6 hereof, each of the Parties hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

### **11.2 Receiver Covenants.**

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

### **11.3 Purchaser Covenants.**

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

## **ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING**

### **12.1 Possession of Purchased Assets.**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and

the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

#### **12.2 Examination of Title and Access to the Purchased Assets.**

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

#### **12.3 Risk.**

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit together with all interest accrued thereon shall be returned to the Purchaser forthwith.

### ARTICLE 13 AS IS, WHERE IS

#### 13.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

### ARTICLE 14 TERMINATION

#### 14.1 Termination of this Agreement.

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to Section 8.2 hereof by the Receiver;
- (3) pursuant to Section 8.4 hereof by the Purchaser; or
- (4) pursuant to Section 12.3 hereof.

#### 14.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser's right to pursue all legal remedies with respect to such breach shall survive such termination, and the Deposit together with all interest accrued thereon and without deduction, shall be returned by the Receiver to the Purchaser forthwith. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as



liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

#### **14.3 Termination If No Breach of Agreement.**

If the Purchaser is not determined to be the Winning Bidder, or if this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of one of the Parties, then:

- (1) the Deposit, together with all interest thereon, shall be returned by the Receiver to the Purchaser forthwith and all other obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement; and
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

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

#### **15.1 Further Assurances.**

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

#### **15.2 Survival Following Completion.**

Notwithstanding any other provision of this Agreement, Section 4.5, Article 9, Article 10, Section 14.2 and Section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of Farber as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

#### **15.3 Notice.**

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

(a) to the Receiver:

A. Farber & Partners Inc.  
150 York Street, Suite 1600  
Toronto, ON M5H 3S5

Attention: Hylton Levy and Paul Denton  
Tel: (416) 496-3070 / (416) 496-3773  
Email: [hlevy@farberfinancial.com](mailto:hlevy@farberfinancial.com) / [pdenton@farberfinancial.com](mailto:pdenton@farberfinancial.com)

and a copy to the Receiver's counsel to:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Steven L. Graff and Jeremy Nemers  
Tel: (416) 865-7726 / 416-865-7724  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

(b) to the Purchaser:

**[American Iron & Metal Company Inc.  
9100, boul. Henri-Bourassa Est  
Montréal, QC H1E 2S4]**

Attention: **[Kamila Wirpszo]**  
Email: **[[kwirpszo@aim-global.com](mailto:kwirpszo@aim-global.com)]**

and a copy to the Purchaser's counsel to:

McMillan LLP  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

Attention: Wael Rostom  
Tel: (416) 865-7790  
Email: [wael.rostom@mcmillan.ca](mailto:wael.rostom@mcmillan.ca)

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any

Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **15.4 Waiver.**

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

#### **15.5 Consent.**

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

#### **15.6 Governing Law.**

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

#### **15.7 Entire Agreement.**

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

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

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

#### **15.9 Time Periods.**

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

**15.10 Assignment.**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until Closing, the Purchaser shall have the right to direct that title to the Real Property be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that: (a) the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into; and (b) the Purchaser shall remain liable for all obligations and liabilities hereunder.

**15.11 Expenses.**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the Transaction contemplated hereby shall be paid by the Party incurring such costs and expenses.

**15.12 Severability.**

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

**15.13 No Strict Construction.**

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

**15.14 Cumulative Remedies.**

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**15.15 Currency.**

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

**15.16 Receiver's Capacity.**

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

**15.17 Planning Act.**

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

**15.18 No Third Party Beneficiaries.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

**15.19 Number and Gender.**

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

**15.20 Counterparts.**

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

*[The remainder of this page is left blank intentionally.]*

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

**AMERICAN IRON & METAL COMPANY INC.**

Per: \_\_\_\_\_  
Name:  
Authorized Signing Officer

**ACCEPTED** by the Receiver this \_\_\_\_ day of \_\_\_\_\_, 2018

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

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

**SCHEDULE "A"**  
**APPROVAL AND VESTING ORDER**

Court File No. <\*>

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

THE HONOURABLE

)

<\*>DAY, THE <\*>

JUSTICE

)

DAY OF <\*>, 2018

)

B E T W E E N :

<\*>

Applicant

- and -

<\*>

Respondent

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties of Waxman Realty Company Inc. ("**Waxman**") and 1340923 Ontario Inc. (together with Waxman, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the "**Purchaser**"), as purchaser, dated <\*>

2018 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “<\*>” to the Report of the Receiver dated <\*>, 2018 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “**Purchased Assets**” in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of <\*> sworn <\*>, 2018, 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 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, including, without limitation, all of the Debtor’s right, title and interest in and to the Real Property (as defined herein) listed on Schedule B hereto, 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 <\*> made <\*>, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the

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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.

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

6. **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.

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.

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## Schedule "A" – Form of Receiver's Certificate

Court File No. &lt;\*&gt;

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

&lt;\*&gt;

Applicant

- and -

&lt;\*&gt;

Respondent

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

- I. Pursuant to an Order of the Honourable Justice <\*> of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated <\*>, 2018, A. Farber & Partners Inc. ("**Farber**") was appointed as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Waxman Realty Company Inc. ("**Waxman**") and 1340923 Ontario Inc. (together with Waxman, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the "**Property**").
- II. Pursuant to an Order of the Court dated <\*>, 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the "**Purchaser**"), as purchaser, dated <\*>, 2018 (the "**Sale Agreement**"), and provided for the

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vesting in the Purchaser of all the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 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.

III. 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Schedule "B" – Legal Description of the Real Property****PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

## Schedule "C"

Instruments to Be Deleted from Title to Real PropertyPIN 07034-0014 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
HR868013	2010/08/12	TRANSFER	\$4,220,000	DOVER INVESTCO INC.	WAXMAN REALTY COMPANY INC.
HR1070901	2012/12/13	CHARGE	\$3,000,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1142193	2013/10/23	NOTICE	-	WAXMAN REALTY COMPANY INC. AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL GP INC.
HR1446119	2017/04/11	LIEN	\$41,006	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-
HR1446123	2017/04/11	LIEN	\$81,797	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-

PIN 32281-0152 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
BC116720	2007/06/29	TRANSFER	\$1,899,170	VICANO DEVELOPMENTS LIMITED	1340923 ONTARIO INC.
BC234044	2012/12/13	CHARGE	\$3,000,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

Claims

1. NASG Canada Inc. and Camille Bouliane and al., Court File Nr. CV-14-10606-00CL.
2. Morris Waxman and al. and Chester Waxman and al, Court File Nr. 07-CL-6901.



## Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants

PIN 07034-0014 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
119980	1961/01/25	BYLAW	-	-	-
H63200	1975/10/07	Notice	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
20R4669	1980/02/21	PLAN REFERENCE	-	-	
H271116	1986/05/07	NOTICE	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
HR868018	2010/08/12	NOTICE OF LEASE	-	WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.
HR1071402	2012/12/14	TRANSFER	\$2,500,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1321803	2015/12/09	APL CH NAME OWNER	-	AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.
HR1331162	2016/01/21	NOTICE OF LEASE	-	AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA	-

PIN 32281-0152 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
2R1058	1977/05/31	PLAN REFERENCE	-	-	-
2R3388	1989/09/28	PLAN REFERENCE	-	-	-
2R6246	2004/02/26	PLAN REFERENCE	-	-	-
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC116728	2007/06/29	NO ASSGN RENT GEN	-	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

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**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**

**PIN 07034-0014 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
119980	1961/01/25	BYLAW	-	-	-
H63200	1975/10/07	Notice	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
20R4669	1980/02/21	PLAN REFERENCE	-	-	
H271116	1986/05/07	NOTICE	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
HR868018	2010/08/12	NOTICE OF LEASE	-	WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.
HR1321803	2015/12/09	APL CH NAME OWNER	-	AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.
HR1331162	2016/01/21	NOTICE OF LEASE	-	AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA	-

**PIN 32281-0152 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
2R1058	1977/05/31	PLAN REFERENCE	-	-	-
2R3388	1989/09/28	PLAN REFERENCE	-	-	-
2R6246	2004/02/26	PLAN REFERENCE	-	-	-
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC116728	2007/06/29	NO ASSGN RENT GEN	-	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

C-1

**SCHEDULE "C"**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

**BURLINGTON PROPERTY:**

**PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**BRANTFORD LANDS:**

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

**SCHEDULE D  
CLAIMS**

1. Morris Waxman et. al. v. Chester Waxman et. al. 07-CL-6901
2. NASG Canada Inc. v. Joseph Howard Camile Bouliane et. al. CV-14-10606-00CL

American Iron & Metal Company Inc.  
Applicant

and

1340923 Ontario Inc. et al  
Respondents

Court File No.

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

Proceeding commenced at Toronto

**ORDER**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON, M5J 2T3

Wael Rostom LS#: 43165S  
Tel: 416-865-7790  
Fax: 416-865-7048

Stephen Brown-Okruhlik LS#: 66576P  
Tel: 416-865-7790  
Fax: 416-865-7048

Lawyers for the Applicant



129  
Mc.

9:30 A.M.  
COUNSEL SLIP

COURT FILE NO CV-18-595577-00CL DATE JUN 5, 2018

NO ON LIST 5

TITLE OF  
PROCEEDING AMERICAN IRON & METAL COMPANY INC.  
134 0923 ONTARIO INC. et al.

COUNSEL FOR:

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S)

June 5/18

Further to my endorsement of May 25, 2018 and the  
submissions of counsel, no one opposing, I am satisfied  
the order applying the receiver and approving the sale process (over)

COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

PHONE & FAX NOS

Matthew Moloci

905-523-1333

moloci@shlaw.ca

905-523-5878

Robert Bruch T 416-217-0110

F 416-217-0220

Counsel for AIM and Maximum Defendants  
in claim brought by NASG

Wael Restom

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416-865-7043

Stephen Brown - Okruhlik

~~Stephen~~ Stephen.brown-okruhlik

STEVEN GRAFF

AIRD & BERLIS LLP

sgraff@airdberlis.com

416 865-7726 (ph)

416 863-1500 (fax)

101, A. FARBER & PARTNERS - removed

-2.

should issue. I am satisfied with both the proposed  
break fee and overbid fee. Orders signed by me.

A. Paballo, J.





CITATION: American Iron v. 1340923 Ontario, 2018 ONSC 2810  
COURT FILE NO.: CV-18-595577-00CL  
DATE: 20180525

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

APPLICATION UNDER  
SUBSECTION 243(1) OF THE *BANKRUPTCY 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

RE: American Iron & Metal Company Inc., Applicant

AND:

1340923 Ontario Inc. and Waxman Realty Company Inc.,  
Respondents

BEFORE: L. A. Pattillo J.

COUNSEL: *Wael Postom and Stephen Brown-Okruhlik*, for the Applicant

*Matt Molici*, for the Respondents

*Steven Graff*, for the proposed Receiver, A. Farber Group

*A. Winton*, for NASG Canada Inc.

*Robert Brush and Clarke Tedesco*, for American Iron & Metal, 134  
Ontario and Waxman Realty Company Inc.

*T. VanKlink*, for the Business Development Bank

HEARD: April 20, 2018

ENDORSEMENT

[1] This is an application by American Iron & Metal Company Inc. ("AIM") for an order appointing A. Farber & Partners Inc. ("Farber") as receiver over all the property and assets of the Respondents, 1340923 Ontario Inc. ("134") and Waxman Realty Company Inc. ("Waxman Realty"). AIM also seeks approval of a stalking horse sale process "proposed by the proposed receiver" for the marketing and sale of the Respondents' respective ownership interests in certain real property, together with ancillary orders.

[2] The application is consented to by the Respondents. It is opposed, however, by NASG Canada Inc. ("NASG") on the grounds that approval of the stalking horse sale process and in particular the requested vesting order would remove its proprietary interest in the properties in question.

[3] AIM is part of a group of companies that carry on business in the scrap metal and recycling industry across North America and elsewhere.

[4] Waxman Realty was incorporated in July 2010 for the purpose of acquiring property located at 4350 Harvester Road, Burlington, Ontario (the "Burlington Property") which it acquired in the same month. The acquisition was financed by a loan from Roynat Capital Inc. pursuant to a loan agreement dated July 30, 2010. Waxman Realty issued a debenture in favour of Roynat granting it security over certain of Waxman Realty's assets, including its ownership interest in the Burlington Property.

[5] In December 2012, AIM purchased a 50% ownership interest in the Burlington Property from Waxman Realty. Since then, AIM and Waxman Realty have co-owned the Burlington Property as tenants in common pursuant to a joint venture agreement.

[6] 134 was incorporated in June 2007 for the purpose of acquiring property located at 143 Adams Boulevard, Brantford, Ontario (the "Brantford Property") which it acquired in the same month. In December 2012, AIM purchased a 50% interest in the Brantford Property from 134. Since then, AIM and 134 have co-owned the Brantford Property as tenants in common pursuant to a joint venture agreement.

[7] Both the Burlington Property and the Brantford Property have been operated as scrap yards.

[8] On October 12, 2012, both Waxman Realty and 134 issued demand debentures in favour of AIM, each in the amount of \$3,000,000. Further, in July 2013, pursuant to a letter agreement with Waxman Realty, AIM paid \$1,414,313.08 to Roynat on behalf of Waxman Realty and assumed the debt owed by it to Roynat on substantially the same terms as attached to the Roynat loan.

[9] AIM is owed \$2,057,152.61 by Waxman Realty, as a result of advances made under the letter agreement, the Burlington Property joint venture agreement and the Waxman Realty demand debenture.

[10] AIM is owed \$278,854.49 by 134 pursuant to advances made to 134 under the terms of the Brantford Property joint venture agreement and the 134 demand debenture.

[11] Waxman Realty and 134 (together the “Debtors”) have acknowledged, among other things, their respective indebtedness and the validity of AIM’s security over both the Burlington Property and the Brantford Property pursuant to a forbearance agreement dated December 22, 2017.

[12] On December 22, 2017, AIM, through its legal counsel, demanded payment of both Waxman Realty and 134’s respective indebtedness and provided each of the companies with notice of intention to enforce its security in accordance with section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985. C. B-3, as amended (the “BIA”).

[13] The purpose behind AIM’s application to appoint a receiver is to facilitate a sale to itself of the Debtor’s interests in both the Burlington Property and the Brantford Property. The proposed sale process contemplates the receiver marketing the two property interests based on a stalking horse bid by AIM. The stalking horse bid is set out in a stalking horse agreement and is comprised of a cash deposit in the amount of \$360,000; a credit in the amount of \$2,336,007.10, representing all the secured debt and accrued interest thereon outstanding on the loans provided by AIM to the Debtors; a further credit in an amount to be determined by the proposed receiver or the court as recoverable under a mortgage in favour of the Business Development Bank of Canada in the principal amount of \$2,050,000 and an accompanying notice of assignment of rents in respect of the Brantford Property; and the balance to be paid in cash on closing.

[14] The stalking horse bid is supported by confidential valuations of both Waxman Realty and 134’s interests in the respective properties. The terms of the bid include a \$500,000 “break fee” plus a minimum overbid of \$150,000. Finally, the proposed sale process seeks vesting orders that vest the Debtors’ interests in the two properties “free and clear of any claims” in light of “separate ongoing litigation”.

[15] Farber has filed a Report in its capacity as “proposed receiver” of Waxman Realty and 134 in which it outlines the proposed sale process, the stalking horse agreement and the break fee. It recommends that the sale process be approved and requests that the proposed Receiver be authorized to conduct the sale process, execute the stalking horse agreement and perform the receiver’s obligations thereunder.

#### NASG

[16] The “separate ongoing litigation” referred to by AIM in its material in respect of the vesting orders, involves a claim by NASG against, among others, AIM, Waxman Realty, 134 and other Waxman parties including Camile Bouliane, commenced in the Superior Court on the Commercial List by Notice of Action dated June 25, 2014 (the “Action”). In the Action, NASG claims that the Defendants are liable for the theft of over 42 million pounds of carbon scrap metal from NASG which took place between January 2007 and May 2014. NASG states that the value of the carbon scrap stolen amounted to \$7,384,524.99.

[17] NASG’s statement of claim alleges numerous causes of action including negligence, negligent misrepresentation, unjust enrichment and/or breach of contract, oppression, theft and conversion and sets out multiple headings of relief including damages and “the imposition of a resulting and/or constructive trust over the funds and assets improperly acquired by the Waxman

Defendants, the AIM Defendants and Bouliane, due to the conversion of or unjust enrichment relating to NASG Canada's carbon scrap metal."

[18] On June 26, 2014, NSAG obtained an *ex parte Mareva* Order requiring, among other things, that Waxman Realty and 134 (part of the Waxman Defendants) disclose their assets and provide a sworn statement with respect thereto. NASG's material filed in support stated that AIM was joined as a necessary party given its ownership interests in, among other things, the Burlington and Brantford Properties and expressly stated that no allegation of wrongdoing was being made against AIM.

[19] NASG's factum on the *Mareva* motion sought, among other things, a certificate of pending litigation ("CPL") against the Burlington and Brantford Properties on the basis of the allegation that the proceeds of the theft were used by the Waxman Defendants to purchase and/or improve the two properties and NASG was claiming a tracing order and constructive trust over the funds and assets improperly acquired by the Waxman Defendants.

[20] In granting the *Mareva* Order, Newbould J. refused to grant a CPL against the two properties. In the endorsement, he stated: "With respect to the two Waxman properties, I think that the request for a CPL should be dealt with after the material and today's order has been served. AIM has an interest in these properties and it is unlikely that the properties could be sold or financed before the return of the matter."

[21] When the matter returned to the court on July 4, 2014, the Defendants requested an adjournment. The June 26<sup>th</sup> order was extended to July 14, 2014. In respect of NASG's CPL request, Newbould J. wrote: "If there is any intent to deal with the Waxman/AIM properties before then, 48 hours' notice are to be given to the plaintiff's counsel."

[22] The matter came back before Newbould J. on December 2, 2014, at which time the parties agreed to a consent order which varied the June 26<sup>th</sup> order by, among other things, requiring that the Waxman Defendants provide 7 days' notice of intent to dispose or encumber either the Burlington or Brantford Properties.

[23] It was pursuant to the December 2, 2014 order that NASG was given notice of this application and have appeared by counsel to oppose it. It submits, given its propriety claim to the two properties (constructive trust), the court does not have the authority to vest off NASG's interest without due process which in the present case requires the trial of the Action. No trial date has been set for the Action.

[24] Initially, NASG requested a brief adjournment in order to complete the evidentiary record supporting its propriety claim. It subsequently withdrew that request and indicated that it was prepared to proceed on the basis of the record before the court.

[25] The court's authority to issue a vesting order is contained in section 100 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43 ("CJA"). That authority, however, does not extend to extinguishing third party proprietary rights: *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, 2018 ONCA 253.

[26] The question for determination, therefore, is whether NASG's contingent claim for a constructive trust in the Action gives it a proprietary interest in the two properties.

[27] A constructive trust is an equitable remedial remedy for certain forms of unjust enrichment. It does not automatically follow from a finding of unjust enrichment. In order for a constructive trust to be found, monetary compensation must be inadequate and there must be a link between the plaintiff's contributions and the property in which they claim an interest. Further, the extent of the constructive trust interest is proportionate to the claimant's contributions. See: *Peter v. Beblow*, [1993] 1 S.C.R. 980, at para. 26; *Kerr v. Baranow*, [2011] 1 S.C.R. 269 at paras. 47 to 53.

[28] In determining whether a monetary award is insufficient, the court may take into account the probability of recovery as well as whether there is a reason to grant the plaintiff the additional rights that flow from recognition of property rights: *Kerr* at para. 52.

[29] AIM submits that NASG's claim for a constructive trust is contingent and it has not established that it has any rights to the properties. In addition, it submits monetary damages are a sufficient remedy for NASG's claims. In that regard, it proposes that the net funds received from the sale of the two properties (after payment of encumbrances and costs) be held by the receiver pending a determination of NASG's claims in the Action.

[30] In my view, AIM's proposal is appropriate. Merely claiming a constructive trust does not create a proprietary interest. In my view, given AIM's proposal that the receiver hold the net sale proceeds pending the determination of NASG's claim coupled with the fact that AIM, who is a Defendant in the Action, continues to own the other ½ interest in the properties, I do not consider an award of monetary compensation to be inadequate. NASG agrees that AIM is a substantial company.

[31] Further, as there is no evidence of a link between the monies stolen from NASG and the properties, NASG's claim may only result in monetary damages. I recognize that NASG has had little time to prepare a complete record before me. Nevertheless, I am satisfied that even if NASG establishes that some of the funds for purchase or improvement of the properties came from funds obtained from the stolen scrap, in the circumstances, a monetary award would not be inadequate.

[32] Finally, there is no evidence that NASG seeks additional rights that may flow from potential property rights in the properties.

[33] Accordingly, I am satisfied that, based on AIM's proposal to have the receiver hold the net sale proceeds from the properties, vesting orders can issue upon the sale of both properties. To the extent that NASG has any rights in the properties arising from the Waxman Defendants' actions, those rights are protected.

[34] NASG's request to dismiss the AIM's application is denied.



### The Stalking Horse Bid

[35] As noted, the proposed sale process with the stalking horse bid includes a \$500,000 break fee to AIM together with a minimum overbid amount of \$150,000. I consider those amounts to be excessive in the circumstances.

[36] A “break fee” in the context of a receivership sale with a credit bid, is an amount which is intended to compensate the unsuccessful credit bidder for the costs it has incurred in carrying out the due diligence necessary to enter into the credit bid agreement in the event that another offer to purchase becomes the successful purchaser.

[37] Where break fees and overbid fees are reasonable, such that they do not jeopardize the ability of a competing bidder to make a bid, they have been approved by this court: *Re Parlay Entertainment*, 2011 ONSC 3492; *Re MPH Graphics Inc.*, 2014 ONSC 947.

[38] In this case, AIM has provided no evidence to justify the break fee of \$500,000, apart from the Stalking Horse Agreement of Purchase and Sale which provides in section 6.1:

In consideration for the Purchaser’s expenditures of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, the Sale Process Orders shall also provide for liquidated damages in the amount of the Break Fee, payable by the Receiver to the Purchaser in the event that a materially higher offer than the Purchase Price advanced by the Purchaser pursuant to the terms herein is obtained for the Purchased Assets through the Sale Process and, as a consequence, the Receiver sells all or substantially all the Purchased Assets to a person or entity other than the Purchaser.

[39] Farber deals with the break fee at paragraph 17(k) of its Report and concludes, based on the underlying complexity of AIM’s roles in negotiating the Stalking Horse Agreement as well as its ongoing requisite involvement and negotiation with any successful third party purchaser, that the break fee “represents a fair and reasonable estimate of the costs and damages which would be incurred by AIM if the Stalking Horse Bid is not consummated.” Apart from its comments on complexity, Farber provides no analysis of how it arrived at that conclusion.

[40] Nor has Farber provided any information or recommendation concerning the proposed overbid fee of \$150,000.

[41] I am not satisfied that the proposed break fee and the overbid fee are reasonable based on the material before me.

[42] With respect to the break fee, there is no evidence of what AIM’s costs were in undertaking due diligence in respect of the transaction. I suspect that there was very little due diligence given that AIM has been a 50% owner of the properties with the Debtors since December 2012 and must be intimately familiar with them and their encumbrances. Nor, in my view is it appropriate to include in the break fee, as Farber has done, an amount in respect of future negotiations with the purchaser of the properties. While there will no doubt be

negotiations with a third party purchaser of the Debtor's interests in the properties, it is not appropriate to require such purchaser to pay AIM's costs of such negotiations.

[43] As noted, there is no information concerning the overbid fee and why it is reasonable in the context of the proposed sale, particularly when it is viewed together with the proposed break fee.

[44] The purpose of the sale process in a receivership is to obtain the highest and best price for the property for the benefit of all creditors. It is important in approving the sale process to ensure that it is open to competing bidders. While there is a place for both break fees and overbid fees, they must be reasonable in the circumstances in that they must not jeopardize the ability of a competing bidder to make a bid. Given the property interests to be sold and the proposed credit bid in this case, I am not satisfied that the proposed break fee and the overbid fee, individually and combined, are reasonable.

[45] For the above reasons, therefore, I do not approve the Stalking Horse Agreement and the proposed sale process.

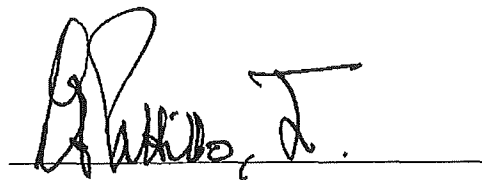
#### Conclusion

[46] Based on the material filed and the reasons set out herein, I am satisfied that it is just and convenient to appoint Farber as the receiver for both Waxman Realty and 134. As indicated, however, I am not prepared to approve the proposed stalking horse agreement or the sale process, without prejudice to the receiver and AIM revising them to address my concerns as noted herein and reapplying for approval.

[47] Given the commercial sensitivity of the valuations of both the Burlington Property and the Brantford Property in the context of the proposed sale, I am satisfied that the test set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 41 has been met and accordingly the Confidential Exhibits shall be sealed pending the completion of any sale.

[48] At the conclusion of the argument, AIM indicated that it may want to reconsider its request for the receiver pending my decision. Upon receipt of these reasons, AIM should arrange a 9:30 am appointment before me to advise how it wishes to proceed.

[49] Costs, if not agreed, can also be dealt with at the 9:30 appointment.

A handwritten signature in black ink, appearing to read 'L. A. Pattillo J.', is written over a horizontal line.

L. A. Pattillo J.



# APPENDIX B

Court File No.: CV-18-595577-00CL

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

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

**AMERICAN IRON & METAL COMPANY INC.**

**Applicant**

**- and -**

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

**Respondents**

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

**AFFIDAVIT OF KAMILA WIRPSZO  
(Sworn April 11, 2018)**

**I, KAMILA WIRPSZO, of the City of Montreal, in the province of Quebec,  
MAKE OATH AND SAY:**

1. I am the Vice-President, Legal Affairs of the applicant, American Iron & Metal Company Inc. ("AIM"), and as such, have knowledge of the matters set out in this affidavit. Where I have relied on information from others I have stated the source of my information and believe it to be true.

2. I swear this affidavit in support of AIM's application for the appointment of a receiver over certain assets of the respondent debtors and the court approval of a related sale process.

### **The Parties**

3. AIM is a corporation incorporated under the *Canada Business Corporations Act* ("CBCA") and belongs to a group of companies that carries on business in the scrap metal and recycling industry across North America and elsewhere. AIM is large and well established enterprise with over 2,500 employees and 70 locations around the world. It has substantial assets in Canada, including hundreds of millions of dollars of annual revenue generated in Ontario.

4. AIM is the successor in interest to, among other entities, American Iron & Metal LP ("AIM LP"), and its former general partner American Iron & Metal GP Inc. ("AIM GP"), following certain corporate reorganizations. AIM LP and AIM GP are the contracting parties in various agreements described in this affidavit. Their rights and liabilities have continued in AIM. I use the term "AIM" in this affidavit in respect of the activities, transactions, right and liabilities of AIM as it is currently constituted as well as those of its predecessor entities which have continued in AIM.

5. 1340923 Ontario Inc. ("134") is a corporation incorporated under the Ontario *Business Corporations Act*. To the best of my knowledge, 134 was incorporated in June 2007 for the purpose of acquiring the property located at 143 Adams Boulevard, Brantford, Ontario (the "Brantford Property"). According to a corporate search that

was obtained by AIM's legal counsel, McMillan LLP ("**McMillan**"), Aaron Waxman and Jeremy Waxman are the only directors of 134. A copy of this corporate search is attached as Exhibit "A" to this affidavit.

6. Waxman Realty Company Inc. ("**WRI**" and together with 134, the "**Debtors**") is the co-owner of the property located at 4350 Harvester Road, Burlington, Ontario (the "**Burlington Property**", together with the Brantford Property, the "**Properties**"). To the best of my knowledge, WRI was incorporated in July 2010 for the specific purpose of acquiring the Burlington Property. According to a corporate search that was obtained by McMillan, Aaron Waxman and Jeremy Waxman are the only directors of WRI. A copy of this corporate search is attached as Exhibit "B" to this affidavit.

7. I am advised by Aaron Waxman that 134 and WRI do not carry on any day-to-day business activities or have employees or management teams.

### **Ownership of the Properties**

#### Burlington Property

8. I am advised by Aaron Waxman that WRI acquired the Burlington Property in July 2010. WRI's acquisition of the Burlington Property was financed by a loan from Roynat Capital Inc. ("**Roynat**"). Roynat and WRI entered into a loan agreement dated July 30, 2010 (the "**Roynat Loan Agreement**") under which Roynat advanced \$3,165,000 to WRI (the "**Roynat Loan**"). In connection with the Roynat Loan, WRI issued a debenture in favour of Roynat (the "**Roynat Debenture**") granting security over certain of WRI's assets including its ownership interest in the Burlington Property. True

copies of the Roynat Loan Agreement and the Roynat Debenture are attached as Exhibit "C" to this affidavit.

9. In December 2012, AIM purchased a 50% ownership interest in the Burlington Property from WRI. Since that time, AIM and WRI have co-owned the Burlington Property as tenants in common.

10. As part of the transaction by which AIM acquired a 50% interest in the Burlington Property, AIM and WRI entered into a joint venture agreement that governs certain aspects of their tenancy in common of the property (the "**Burlington Property JVA**"). A true copy of the Burlington Property JVA is attached as Exhibit "D" to this affidavit.

11. On October 12, 2012, WRI issued a demand debenture in favour of AIM in the amount of \$3,000,000 (the "**WRI Debenture**"). A true copy of the WRI Debenture is attached as Exhibit "E" to this affidavit.

12. In July 2013, Royat alleged that WRI was in default under the Roynat Loan Agreement and was prepared to enforce its security against WRI under the Roynat Debenture. On July 31, 2013, AIM paid Roynat \$1,414,313.08 on behalf of WRI in order to satisfy WRI's debt to avoid the prospect of Roynat enforcing on its security. AIM and WRI agreed by letter agreement that these monies were advanced by AIM on substantially the same terms as attached to the Roynat Loan (the "**Letter Agreement**"). A true copy of the Letter Agreement is attached as Exhibit "F" to this affidavit.

13. AIM effectively stepped into the shoes of Roynat as WRI's creditor in respect of these advances. The funds paid to Roynat by AIM on behalf of WRI represent over half of the Indebtedness, as defined below.

Brantford Property

14. I am advised by Aaron Waxman that 134 acquired the Brantford Property in June 2007.

15. In December 2012, AIM purchased a 50% ownership interest in the Brantford Property from 134. Since that time, AIM and 134 have co-owned the Brantford Property as tenants in common.

16. As part of the transaction by which AIM acquired a 50% interest in the Brantford Property, AIM and 134 entered into a joint venture agreement that governs certain aspects of their tenancy in common of the property (the "**Brantford Property JVA**", and together with the Burlington Property JVA, the "**JVAs**"). A true copy of the Brantford Property JVA is attached as Exhibit "G" to this affidavit.

17. On October 12, 2012, 134 issued a demand debenture in favour of AIM in the amount of \$3,000,000 (the "**134 Debenture**", and together with the WRI Debenture, the "**Demand Debentures**"). A true copy of the 134 Debenture is attached as Exhibit "H" to this affidavit.

### **The Loan and Security**

18. AIM's predecessor entities have made advances to WRI pursuant to the Letter Agreement and under the terms of the Burlington Property JVA and the WRI Debenture. Consequently, WRI is indebted and liable to the applicant in the amount of \$2,057,152.61 (the "**WRI Indebtedness**").

19. AIM's predecessor entities have made advances to 134 under the terms of the Brantford Property JVA and the 134 Debenture. Consequently, 134 is indebted and liable to AIM in the amount of \$278,854.49 (the "**134 Indebtedness**", and collectively with the WRI Indebtedness, the "**Indebtedness**").

20. Pursuant to the Demand Debentures, WRI and 134 each agreed to the appointment of a receiver or trustee in the events of default thereunder.

21. According to the terms of the loan and security documents described above, the WRI Indebtedness and 134 Indebtedness are each demand obligations that are payable by WRI and 134, respectively, on demand by AIM.

22. AIM LP, AIM GP and the Debtors entered into a forbearance agreement dated December 22, 2017 (the "**Forbearance Agreement**"). A true copy of the Forbearance Agreement is attached as Exhibit "I" to this affidavit with portions redacted that include confidential funding arrangements between the parties. I understand from AIM's legal counsel, McMillan LLP ("**McMillan**") that an unredacted version of the Forbearance Agreement will be filed with the Court on this application.

23. Pursuant to the Letter Agreement, the Demand Debentures, the JVAs and the Forbearance Agreement, the Debtors have granted security interests and charges over their present and after-acquired real property.

24. Under the Forbearance Agreement, each of the Debtors acknowledged, among other things, their respective indebtedness and the validity of the applicant's security over their respective property. The parties also agreed to the Court-appointment of a receiver over the property of the Debtors.

25. In the Forbearance Agreement, WRI and 134 have acknowledged that the Indebtedness is due and payable and that they are unable to pay such indebtedness, and have each consented to the accelerated enforcement of AIM's security.

26. On December 22, 2017, McMillan sent letters on AIM's behalf to WRI and 134 demanding payment of the WRI Indebtedness and the 134 Indebtedness respectively, and provided each of the Debtors with notice of its intention to enforce its security in accordance with section 244 of the BIA. True copies of these demand letters and Section 244 notices are attached as Exhibit "J" to this affidavit.

27. I believe that the appointment of a receiver is necessary to allow the applicant to maximize recovery of the Indebtedness.

28. The accounting firm, A. Farber & Partners Inc. ("**Farber**"), the proposed receiver in this application, is a registered trustee in bankruptcy and has provided its consent to being appointed as receiver. A true copy of Farber's signed consent is attached as Exhibit "K" to this affidavit.



### **Tenants of the Properties**

29. Waxman Industrial Services Corp. (“WIS”) previously carried on business in the scrap metal and recycling industry at various facilities in Ontario, including at the Properties.

30. Pursuant to leases dated August 12, 2012 and December 14, 2012, WIS became the tenant of both of the Properties (the “WIS Leases”).

31. Between 2012 and 2016, AIM advanced funds to WIS to finance its operations at the Properties. AIM’s advances to WIS were secured by two general security agreements in favour of AIM. Following various events of default by WIS under its loan and security agreements, in October 2016 AIM (through its wholly owned subsidiary company, to which AIM assigned its security) enforced its security pursuant to provisions of the Ontario *Personal Property Security Act* through a foreclosure on WIS’s assets, including on the WIS Leases.

32. Pursuant to two agreements, each dated February 1, 2017 (the “**Lease Assignment Agreements**”), the WIS Leases were assigned to a wholly owned subsidiary of AIM. True copies of the Lease Assignment Agreements are attached as Schedule “B” to the Forbearance Agreement.

33. Out of an abundance of caution, prior to the foreclosure, AIM provided notice of its intention to foreclose on the WIS Leases to NASG Canada Inc. (“NASG”) which has asserted a constructive Trust in the Properties, as described further below. NASG did not object to AIM’s enforcement of its security against WIS.

## **Other Creditors of the Debtors**

### Secured Parties

34. McMillan advises me that it obtained a parcel register for the Brantford Property current as April 9, 2018, a copy of which McMillan has provided to me and is attached as Exhibit "L" to this affidavit (the "**Brantford PIN**"). The Brantford PIN shows that the following instruments as registered on title of the Brantford Property:

- a) Charge registered on June 29, 2007 as Instrument No. BC116723 in favour of Business Development Bank of Canada ("**BDC**");
- b) Notice of Assignment of Rents – General registered on June 29, 2007 as Instrument No. BC116728 in favour of BDC; and
- c) Charge registered on December 13, 2012 as Instrument No. BC234044 in favour of AIM GP.

35. McMillan advises me that it obtained a parcel register for the Burlington Property current as of April 9, 2018, a copy of which McMillan has provided to me and is attached as Exhibit "M" to this affidavit (the "**Burlington PIN**"). The Burlington PIN shows that the following instruments are registered on title of the Burlington Property:

- a) Charge registered on December 13, 2012 as Instrument No. HR1070829 in favour of AIM GP (the "**Burlington Charge**");
- b) Notice registered on October 23, 2013 as Instrument No. HR1142193 containing amendments to the Burlington Charge;

- c) Lien registered on April 11, 2017 as Instrument No. HR1446119 in favour of Her Majesty the Queen in Right of Canada as represented by the Ministry of National Revenue; and
- d) Lien registered on April 11, 2017 as Instrument No. HR1446123 in favour of Her Majesty the Queen in Right of Canada as represented by the Ministry of National Revenue.

36. McMillan advises me that it obtained a Personal Property Security Registration System Enquiry Response Certificate from the Ministry of Government Services (Ontario) with a file currency of April 8, 2018 in respect of 134, a copy of which has provided to me and is attached as Exhibit "N" to this affidavit (the "134 PPSA Search"). The 134 PPSA Search shows the following financing statements:

Debtor	Secured Party	File No.	Registration No.
134	BDC	636213762	20070611 1555 1295 3985
			20110812 1005 2611 1069
134	AIM	735740388	20180117 1132 1590 1174

37. McMillan advises me that it obtained a Personal Property Security Registration System Enquiry Response Certificate obtained from the Ministry of Government Services (Ontario) with a file currency of April 8, 2018 in respect of WRI, a copy of which has provided to me and is attached as Exhibit "O" to this affidavit.

Debtor	Secured Party	File No.	Registration No.
WRI	AIM GP and AIM LP	688831326	20130723 1136 1590 4687

The Waxman Litigants

38. WIS, WRI and Aaron Waxman, among others, have been named as defendants in the action bearing court file no. 07-CL-6901 by Morris Waxman (both in his personal capacity and as the trustee of the Estate of I. Waxman & Sons Limited) and Solid Waste Reclamation Inc. (the “**Waxman Action**”). The plaintiffs in the Waxman Action allege that the defendants acted oppressively and in breach of the fiduciary duties owed to I. Waxman & Sons Limited by diverting the clients of that company to WIS. Among other things, the plaintiffs seek an accounting of all profits diverted to WIS or the other defendants and a constructive trust over the assets of WRI and other defendants.

39. I am advised by Aaron Waxman that the Debtors have obtained the consent of the plaintiffs in the Waxman Action to the appointment of a receiver and to the sale of the Properties free and clear of any encumbrances pursuant to a court-sanctioned sale process, and that the plaintiffs reserve any right they may have to assert a claim in respect of the net cash proceeds of a sale of the Properties.

NASG

40. According to its statement of claim in litigation described further below, NASG is an Ontario company with its head office in Woodstock and is a Tier II supplier of metal stampings and welded assemblies to the automotive industry.

41. On June 25, 2014, NASG commenced an action bearing Court File No. CV-14-10606-00CL against WIS, WRI, 134, Aaron Waxman, Jeremy Waxman, AIM LP, AIM GP and other defendants (the “**NASG Action**”) by serving a Notice of Action.

42. In the NASG Action, NASG alleges that between 2007 and 2014 an individual carried out a fraud against NASG that involved manipulating scales at NASG's facility in Woodstock to record lower volumes of scrap materials when being picked up as well as outright theft of materials. NASG alleges that WIS, AIM LP, AIM GP, Aaron Waxman and Jeremy Waxman were all aware of the alleged fraud and claims against these parties a constructive trust in the Properties. AIM denies the allegations against it and intends to aggressively defend against these claims.

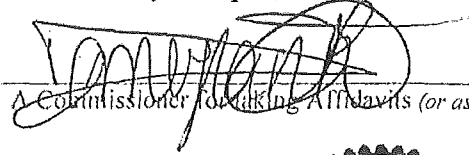
43. I understand from Clarke Tedesco, a lawyer representing AIM in the NASG Action, that the trial of the NASG Action is not currently scheduled for hearing. I also understand from Mr. Tedesco that as of this date, NASG has not asserted any legal right or claim in the Properties other than the contingent interest that it asserts in the NASG Action.

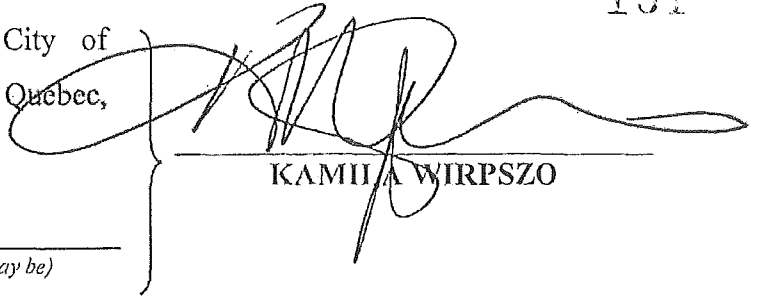
#### **The Stalking Horse Sale Process**

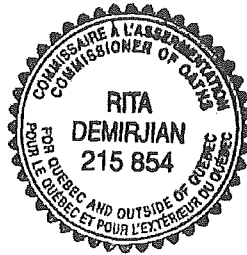
44. McMillan advises me that Farber has prepared a sale process that it proposes to administer to market and sell the Debtors' 50% interest in the Properties and has provided me with a copy of the proposed sale process. AIM has agreed to act as the stalking horse bidder under the proposed sales process and has prepared a bid to serve as the stalking horse bid in the process, which is reflected in a proposed stalking horse agreement signed by AIM on April 11, 2018 (the "**Stalking Horse Agreement**"). A true copy of the Stalking Horse Agreement with the purchase price redacted is attached as Exhibit "P" to this affidavit.

151

SWORN BEFORE ME at the City of  
Montreal, in the Province of Quebec,  
this 11<sup>th</sup> day of April, 2018.

  
A Commissioner for taking Affidavits (or as may be)

  
KAMILA WIRPSZO



American Iron & Metal Company Inc.      1340923 Ontario Inc. et al  
Applicant      and      Respondents

Court File No.: CV-18-595577-00CL

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF KAMILA WIRPSZO**  
**(Sworn April 11, 2018)**

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Lawyers for the Applicant



# APPENDIX C



Court File No. CV-18-595577-00CL

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

B E T W E E N :

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**REPORT OF A. FARBER & PARTNERS INC.,  
IN ITS CAPACITY AS PROPOSED RECEIVER OF WAXMAN REALTY  
COMPANY INC. AND 1340923 ONTARIO INC.**

(April 17, 2018)

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COMPANY INC. AND 1340923 ONTARIO INC.  
(April 17, 2018)**

**INTRODUCTION**

1. This report (this “**Report**”) is filed by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the proposed court-appointed receiver (in such capacity, the “**Proposed Receiver**”), of all of the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Canada Inc. (“**134Co**”, and together with Waxman, the “**Debtors**”, and each a “**Debtor**”), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).

2. American Iron & Metal Company Inc. (“AIM”) has brought an application seeking the appointment of Farber as the Proposed Receiver. The purpose of this Report is to provide the recommendations of the Proposed Receiver, should it be appointed by this Court, with respect to the following additional substantive relief that is being sought on the return of AIM’s application:

- (a) an Order approving a stalking horse sale process for the marketing and eventual sale of the Debtors’ respective interests in certain real property and related assets (the “Sale Process”), including approving the asset purchase agreement executed by AIM and appended to the AIM Affidavit (as defined herein) (the “**Stalking Horse Agreement**”), granting a charge in favour of AIM over the Debtors’ respective interests in the real property to secure the Break Fee (as defined in the Stalking Horse Agreement) and authorizing the Proposed Receiver to conduct the Sale Process, execute the Stalking Horse Agreement and perform the Proposed Receiver’s obligations under the Sale Process and the Stalking Horse Agreement;
- (b) an Order sealing the Confidential Exhibit “1” to this Report; and
- (c) such further and other relief as the Proposed Receiver may advise and this Court may permit.

#### DISCLAIMER

3. This Report has been prepared for the use of the Court and the Debtors’ stakeholders, in the event that Farber is appointed as the Proposed Receiver, as general information

relating to the Debtors in connection with the substantive relief proposed at paragraph 2 of this Report. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. Neither Farber nor the Proposed Receiver will assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Report for any other purpose.

4. In preparing this Report, the Proposed Receiver has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Debtors, including AIM and the Debtors. The Proposed Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Proposed Receiver expresses no opinion or other form of assurance with respect to such information.
5. All references to dollars in this Report are in Canadian currency unless otherwise noted.

## BACKGROUND

6. The Proposed Receiver understands from AIM that the Debtors do not have any employees, do not carry on any day-to-day business activities and do not have any substantive business other than their interests in the Real Property (as defined below).
7. AIM and one of the Debtors (Waxman) are registered on title as being tenants in common and each holding a one-half ownership interest in the real property located at 4350 Harvester Road, Burlington, Ontario (the "**Burlington Real Property**"). Similarly, the

other Debtor (134Co) and AIM are registered on title as being tenants in common and each holding a one-half ownership interest in the real property located at 143 Adams Boulevard, Brantford, Ontario (the “**Brantford Real Property**”, and together with the Burlington Real Property, the “**Real Property**”).

8. In addition to its ownership interests in the Real Property, AIM is also registered on title to both the Burlington Real Property and the Brantford Real Property as a mortgagee in the principal amount of \$3,000,000 (the “**AIM Mortgages**”, and each an “**AIM Mortgage**”). The Proposed Receiver is in receipt of an independent legal opinion from its counsel, Aird & Berlis LLP, with respect to the security granted by the Debtors to AIM, including the AIM Mortgages. Subject to the usual assumptions and qualifications of an opinion of such nature, the opinion concludes that the Debtors’ indebtedness to AIM is secured by valid and enforceable security interests in certain personal property of the Debtors and the AIM Mortgages. As set out in the Affidavit of Kamila Wirpszo sworn April 11, 2018 (the “**AIM Affidavit**”), the Debtors’ combined secured indebtedness to AIM presently outstanding is approximately \$2.3 million.
9. In the case of the Burlington Real Property, and apart from municipal bylaws, notices and plan references, the applicable AIM Mortgage is registered on title behind only a notice of lease in favour of Waxman Industrial Services Corp. (“**WIS**”). The Proposed Receiver understands that the Burlington Real Property is now leased to 9934308 Canada Inc. (“**993**”) as successor and assign to WIS, and that WIS and 993 are wholly-owned subsidiaries of AIM. Other registered interests on title to the Burlington Real Property,

which are registered behind the applicable AIM Mortgage, are notices of a charge of lease and accompanying security interest in favour of Royal Bank of Canada and liens in favour of the Crown (Canada Revenue Agency). A copy of the Burlington parcel register is attached as Exhibit "M" to the AIM Affidavit.

10. In the case of the Brantford Real Property, and apart from plan references and an easement, the applicable AIM Mortgage is registered on title behind a mortgage in favour of Business Development Bank of Canada ("**BDC**") in the principal amount of \$2,050,000 (the "**BDC Mortgage**") and an accompanying notice of assignment of rents (together with the BDC Mortgage, the "**BDC Registrations**"). There are no other registered interests on title to the Brantford Real Property. It is proposed in the Stalking Horse Agreement that, should the transaction contemplated thereunder be consummated, the BDC Registrations will remain on title as permitted encumbrances, to be assumed exclusively by AIM (or paid in full by AIM). A copy of the Brantford parcel register is attached as Exhibit "L" to the AIM Affidavit.
11. The Proposed Receiver also understands that two claims have been commenced in the Ontario Superior Court of Justice (defined in the AIM Affidavit as the "**Waxman Action**" and the "**NASG Action**") asserting, amongst other things, a constructive trust over some or all of the Real Property. No notice (whether for a certificate of pending litigation or otherwise) of either the Waxman Action or the NASG Action has been registered on title to the Real Property. The Proposed Receiver understands from the AIM Affidavit that the Debtors have obtained the consent of the plaintiffs in the Waxman

Action to the sale of the Debtors' interests in the Real Property by a court-appointed receiver, subject to such plaintiffs reserving any right they may have to assert a claim in respect of the net cash proceeds of sale. The Proposed Receiver further understands that the NASG Action was commenced approximately 18 months after the AIM Mortgages were registered on title.

12. Further particulars regarding the background of the Real Property, the Debtors and their creditors and other stakeholders are set out in the AIM Affidavit.

#### **THE PROPOSED SALE PROCESS, STALKING HORSE AGREEMENT AND BREAK FEE**

13. The Proposed Receiver has sought the input of the Debtors, AIM and each of their respective legal counsel to formulate the proposed Sale Process. In this regard, the Proposed Receiver also commissioned appraisals of the Real Property and related value of the Debtors' registered interest therein from Altus Group Limited ("Altus"). Copies of the appraisal reports provided by Altus in respect of the Real Property (one for the Burlington Real Property and one for the Brantford Real Property) dated February 13, 2018 (the "Altus Appraisals") are attached as **Confidential Appendix "1"** to this Report. As the Altus Appraisals contain commercially sensitive information, the Proposed Receiver believes that the public dissemination of the Altus Appraisals would be prejudicial to the integrity and effectiveness of the Sale Process. Accordingly, the Proposed Receiver recommends that the Altus Appraisals be sealed pending further Order of this Court.

14. AIM has submitted to the Proposed Receiver a proposed stalking horse bid to be used in the proposed Sale Process for the purchase of the Debtors' interests in the Real Property and related assets (the "**Stalking Horse Bid**"), which is reflected in the Stalking Horse Agreement. A redacted copy of the Stalking Horse Agreement is attached as Exhibit "P" to the AIM Affidavit. As both a mortgagee and other registered owner of the Real Property, AIM has advised the Proposed Receiver that it is concerned about the negative market impact of disclosing publicly the proposed purchase price and allocation in the Stalking Horse Bid until and unless such time as the proposed Sale Process is approved by this Court. In this regard, the Proposed Receiver understands that AIM will be filing an unredacted copy of the Stalking Horse Agreement with the Court. Provided that the proposed Sale Process is approved by this Court, the Receiver recommends that the unredacted Stalking Horse Agreement then immediately be disclosed publicly to permit the commencement of the Sale Process.
15. The Purchase Price (as defined in the Stalking Horse Agreement) is comprised of:
- (a) a cash deposit in the amount of \$360,000 (the "**Deposit**"), which is proposed in the Stalking Horse Agreement to be delivered to the Proposed Receiver within two business days of the date of acceptance of the Stalking Horse Agreement;
  - (b) a credit in the amount of \$2,336,007.10 (the "**Credit Bid Amount**"), representing all the secured debt and accrued interest thereon outstanding under the loans provided by AIM to the Debtors;
  - (c) a further credit in an amount to be determined by the Proposed Receiver or this Court as recoverable by AIM from the Debtors for the discharge of the Debtors' obligations under the BDC Registrations (which, as stated earlier, are proposed to remain on title under the Stalking Horse Agreement as permitted encumbrances until paid in full by AIM) (collectively, the "**BDC Credit Amount**"); and



- (d) the balance to be paid in cash on closing.
16. As 134 only holds a 50% registered ownership position in the Brantford Real Property, the Proposed Receiver's preliminary determination at the time of finalizing this Report is that, all other things being equal, the BDC Credit Amount in favour of AIM for discharging 134's obligations under the BDC Registrations should be 50% of the total outstanding indebtedness secured by the BDC Registrations as at the date of the Proposed Receiver's appointment, plus any necessary adjustments from the Proposed Receiver's appointment to closing. This preliminary determination is subject to, amongst other things, the Proposed Receiver being satisfied as to the validity and enforceability of the BDC Registrations and the underlying indebtedness owing to BDC. The Proposed Receiver understands from AIM that the total outstanding indebtedness secured by the BDC Registrations as at the date of this Report is between approximately \$500,000 and \$600,000.
17. The proposed Sale Process will involve canvassing the market for one or more superior bid(s) to the Stalking Horse Bid, and is attached as **Appendix "A"** to this Report. A summary of the significant terms of the Sale Process is set out below:
- (a) the Proposed Receiver is to compile a list of interested parties in consultation with the Debtors and the Farber network of advisors and investors in the real estate sector in advance of the Proposed Receiver's appointment;
  - (b) the Proposed Receiver is to send an interest solicitation letter (the "**Teaser**") and confidentiality agreement ("**CA**") to all parties identified by Farber and the

Debtors as potentially having an interest in the Purchased Assets (as defined in the Stalking Horse Agreement) within two business days of this Court approving the Sale Process (the “**Sale Process Order**”);

- (c) information pertaining to the opportunity will be posted within two business days of issuance of the Sale Process Order on the Proposed Receiver’s website, which will include copies of:
- the Stalking Horse Agreement;
  - the Sale Process and related terms and conditions;
  - the Sales Process Order; and
  - the Teaser;
- (d) the Proposed Receiver shall advertise the Purchased Assets and the Sale Process in *The Globe & Mail* (National Edition) within five business days of issuance of the Sale Process Order;
- (e) interested parties expressing an interest in participating in the Sale Process will be required to execute the CA, after which they will receive available information in respect of the Purchased Assets, including access to the Proposed Receiver’s virtual data room, which will also include a Confidential Information Memorandum (“CIM”), setting out the opportunity. In addition, parties wishing to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the virtual

data room. Any such sites visits are to be coordinated through the Proposed Receiver;

- (f) interested parties will have until 4:00 p.m. (Toronto time), on Tuesday, May 22, 2018 (the “**Bid Deadline**”) to submit a competing bid (a “**Competing Bid**”), which must be pursuant to the Sale Process procedures and, amongst other matters, must include a cash deposit equal to 10% of the Competing Bid (the “**Deposit**”). The Deposit will be refunded in the event that its corresponding Competing Bid is not ultimately accepted. Competing Bids are to be made using the Stalking Horse Agreement as a template, and are to be without conditions other than the approval of this Court;
- (g) in the event there is no Superior Bid (as defined in the Stalking Horse Agreement) lodged with the Proposed Receiver prior to the Bid Deadline, the Stalking Horse Bid shall be declared to be the Winning Bid (as defined in the Stalking Horse Agreement);
- (h) in the event one or more Superior Bid(s) is lodged with the Proposed Receiver prior to the Bid Deadline, the Proposed Receiver will distribute the following documents by no later than 5:00 p.m. (Toronto time) on May 24, 2018 to AIM and each party that has made a Superior Bid:
  - an invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. (Toronto time) on May 25, 2018 (the “**Auction**”);

- a copy of the bid that the Proposed Receiver, in its sole and unfettered discretion, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “**Lead Bid**”); and
- a copy of a set of rules for the Auction established by the Proposed Receiver acting in its sole and unfettered discretion with a view of maximizing the purchase price for the Purchased Assets,

and the Winning Bid shall be determined at the Auction (and an agreement of purchase and sale entered into in respect of the Winning Bid);

- (i) the Proposed Receiver will bring a motion to Court to approve the Winning Bid and obtain an approval and vesting order in favour of the purchaser thereunder;
- (j) closing of the Winning Bid is to take place on or prior to June 20, 2018; and
- (k) in the event that the Winning Bid is not from AIM and that AIM is not in default under the Stalking Horse Agreement, it is proposed that AIM be paid the Break Fee of \$500,000. In light of AIM’s unique position as both a mortgagee and partial owner of the Real Property (and therefore the underlying complexity of not only negotiating the Stalking Horse Agreement and the Sale Process, but also the ongoing requisite involvement of and negotiations by AIM with any third-party purchaser of the Debtors’ interests in the Real Property should the Stalking Horse Bid not be declared the Winning Bid), the Stalking Horse Agreement provides an acknowledgment that the Break Fee represents a fair and reasonable estimate of the costs and damages which would be incurred by AIM if the Stalking Horse Bid is not consummated. The Break Fee is not intended to be punitive in nature or to

discourage competitive bidding in the Sale Process. As the Break Fee would only be payable from cash proceeds upon closing of a Winning Bid by a third-party that is superior to the Stalking Horse Bid, the Proposed Receiver does not believe that the Break Fee (or the charge sought by AIM to secure the Break Fee) is prejudicial to stakeholders.

A chart summarizing the material deadlines for the Sales Process is set out below

Milestone	Date
Court Approval of Sale Process	Sale Process Order Approval - Targeted April 20, 2018
Begin Marketing to Interested Parties	Within two business days of issuance of Sale Process Order
Publish Notice in the <i>Globe &amp; Mail</i> (national edition)	Within five business days of issuance of Sale Process Order
Bid Deadline	By 4:00 p.m. on May 22, 2018
Selection of Winning Bid	On or prior to 5:00 p.m. on May 25, 2018
Court approval of Winning Bid and Issuance of Approval and Vesting Order	On or prior to 5:00 p.m. on June 8, 2018
Closing of Winning Bid	On or prior to June 20, 2018

18. Overall, the proposed Sale Process provides in excess of four weeks to market the opportunity and canvass the market for one or more Superior Bid(s) to the Stalking Horse Bid. The Sale Process contemplates a thorough marketing effort as well as providing a forum and a deadline to permit and encourage any serious competing bidders to come forward with firm purchase offers in order obtain the maximum value for the Debtors' interests in the Real Property and any related ancillary assets. Once the Sale Process has been completed, the Winning Bid selected and the net sale proceeds confirmed, the Proposed Receiver would then be in a position to recommend how such net sale proceeds

should be distributed amongst the Debtor's stakeholders and/or propose a process for determining same.

19. The Proposed Receiver has had the benefit of review of the Altus Appraisals and confirms that the Stalking Horse Bid is acceptable to the Proposed Receiver as a stalking horse bid. The Proposed Receiver is also of the view that the Sale Process, as proposed, would be less expensive to administer than if a listing agent/broker were involved, and that the benefit of such listing agent/broker would be outweighed by its cost (as a result of, amongst other things, the quantum of the Stalking Horse Bid and the unique fact that AIM already has a 50% registered ownership interest in the Real Property).
20. If the Stalking Horse Agreement and the Sale Process Order are approved by this Court, the Proposed Receiver will immediately execute the Stalking Horse Agreement and proceed to implement the Sale Process. In anticipation of these events, the Proposed Receiver has been, as of the date of this Report, in the process of compiling a list of potentially interested parties, drafting a CIM and assembling further documentation related to the Purchased Assets to populate a virtual data room, such that the Sale Process may be implemented immediately should this Court approve same.

## RECOMMENDATIONS

21. The Proposed Receiver respectfully recommends that the Sale Process be approved by this Court, on the basis that it is the most effective and commercially-reasonable strategy to maximize the value of the Debtors' assets for stakeholders, and therefore requests that

the Proposed Receiver be authorized to conduct the Sale Process, execute the Stalking Horse Agreement and perform the Proposed Receiver's obligations under the Sale Process and the Stalking Horse Agreement.

22. The Proposed Receiver respectfully requests that this Court accept this Report and the recommendations contained herein.

**A. Farber & Partners Inc., in its capacity as  
the proposed court-appointed receiver of  
Waxman Realty Company Inc. and 1340923 Ontario Inc.,  
and not in its personal capacity**

Per:   
Name: Hylton Levy  
Title: Partner

# TAB 1



**CONFIDENTIAL – EXHIBIT “1”**

**(Subject to a request for a sealing order)**

# TAB A

## STALKING HORSE SALE PROCESS

### Purpose

1. The within stalking horse sale process (the “**Stalking Horse Sale Process**”) will be conducted by A. Farber & Partners Inc. in its capacity as court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Ontario Inc. (together with Waxman, the “**Debtors**”), in consultation with the Debtors’ stakeholders, as the Receiver deems appropriate. The purpose of the Stalking Horse Sale Process is to identify one or more purchasers of all the Debtors’ right, title and interest in and to (and only to the extent of all the Debtors’ right, title and interest in and to) (collectively, the “**Real Property Interests**”): (i) the real property municipally known as 143 Adams Boulevard in Brantford, Ontario and legally described in PIN 32281-0152 (LT); and (ii) the real property municipally known as 4350 Harvester Road in Burlington, Ontario and legally described in PIN 07034-0014 (LT).
2. Unless otherwise indicated herein, any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.

### Sale Process Procedures

3. The Receiver will compile a list of prospective purchasers (together with any other party expressing an interest in the Real Property Interests, the “**Interested Parties**”). The Receiver will make best efforts to canvass the interest of all Interested Parties.
4. The Sale Process will be conducted by the Receiver and will provide Interested Parties with the opportunity to submit offers to purchase the Real Property Interests.
5. The Receiver shall cause a notice of the Stalking Horse Sale Process to be published in The Globe and Mail (National Edition), as well as any other publications as the Receiver may deem appropriate, within five (5) days following the issuance an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) approving the Stalking Horse Sale Process (the “**Stalking Horse Sale Process Order**”), or as soon as practicable thereafter.

6. After the issuance of the Stalking Horse Sale Process Order, the Receiver will distribute to Interested Parties an interest solicitation letter (the **"Teaser"**) which will provide an overview of the opportunity to purchase the Real Property Interests. A form of confidentiality agreement (**"CA"**) will be attached to the interest solicitation letter that Interested Parties will be required to sign in order to gain access to confidential information and to commence performing due diligence (each Interested Party who signs a CA being referred to herein as, a **"Prospective Offeror"**).
7. The Receiver will provide to each Prospective Offeror access to an electronic data room (which will include certain financial and other information with respect to the Real Property Interests). The Receiver will also facilitate diligence by Prospective Offerors, including arranging site visits.
8. Information pertaining to the Stalking Horse Sale Process will be posted on the Receiver's website, including the within Stalking Horse Sales Process Terms, the Stalking Horse Sale Process Order, a CA and the Agreement of Purchase and Sale, dated April 9, 2018 (the **"Stalking Horse Bid"**), between the Receiver and American Iron & Metal Company Inc. (**"AIM"** or the **"Stalking Horse Bidder"**).
9. The Receiver shall have the right to limit any Prospective Offeror's access to confidential information. This will include limiting access, if deemed appropriate, to parties who the Receiver reasonably believes are not likely to be serious offerors.

#### Submission of Offers

10. In order to be accepted by the Receiver, any competing bid (each, a **"Competing Bid"**) for the Real Property Interests must be on substantially the same terms and conditions as those contained in the Stalking Horse Bid, except with respect to the Purchase Price (as defined in the Stalking Horse Bid). Any Competing Bid accepted by the Receiver as a superior bid to the Stalking Horse Bid is, in each case, a **"Superior Bid"**.
11. The Receiver shall, in its sole discretion, determine whether any Competing Bid is a Superior Bid, provided that no Competing Bid shall qualify as a Superior Bid unless it meets the following minimum criteria:

- (a) it must be received by the Receiver, in its entirety, by no later than the Bid Deadline (as set out in the Sale Process Timeline below);
  - (b) it must be submitted in the form of a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid;
  - (c) it must be accompanied by a cash deposit (the “**Deposit**”) in an amount equal to the sum of ten percent of the aggregate purchase price of such Competing Bid by way of certified cheque or wire, payable pursuant to the terms of such Competing Bid, and which is not subject to any encumbrances;
  - (d) it must remain open for acceptance and completion until approval by the Court of an agreement of purchase and sale in respect of the Real Property Interests;
  - (e) it must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;
  - (f) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder's obligation to close that are not otherwise contained in the Stalking Horse Bid;
  - (g) it must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by such Competing Bid on the terms specified therein; and
  - (h) it must be for an aggregate purchase price at least equal to the sum of the Purchase Price (as defined in the Stalking Horse Bid) plus the Break Fee (as defined in the Stalking Horse Bid) and an additional minimum increment of \$150,000.
12. The Deposit will be refunded in the event a Competing Bid, as submitted, is not accepted by the Receiver or if a party who submitted a Superior Offer is not the Winning Bidder (defined below).

**The Winning Bid and Auction Process**

13. In the event that one or more Superior Bid is lodged with the Receiver in accordance with the terms hereof, the Receiver will distribute the following documentation by no later than 5:00 p.m. (Toronto time) on May 24, 2018 to the Stalking Horse Bidder and the maker(s) of each Superior Bid:
- (a) an invitation to an auction of the Real Property Interests to be held on or before 5:00 p.m. (Toronto time) on May 25, 2018 at the offices of the Receiver (the **"Auction"**);
  - (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all the Superior Bids (the **"Lead Bid"**); and
  - (c) a copy of a set of rules for the conduct of the Auction, to be established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Real Property Interests (the **"Auction Rules"**), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than \$50,000; and (iii) the highest bid received at the Auction shall be the winning bid (the **"Winning Bid"**).
14. Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the **"Winning Bidder"**) and the Receiver (the **"Winning Bid Agreement"**), in which case the Winning Bid Agreement shall be constituted by:
- (a) the Stalking Horse Bid or the agreement of purchase and sale submitted to the Receiver by the Winning Bidder, as the case may be, and as amended pursuant to the Auction; and
  - (b) the acceptance of the Winning Bid.

15. In the event that there is no Superior Bid lodged with the Receiver in accordance with the terms hereof, the Stalking Horse Bid and the Stalking Horse Bidder shall be declared to be the Winning Bid, the Winning Bid Agreement and the Winning Bidder, as applicable.
16. Once the Winning Bid Agreement is determined, the Receiver will bring a motion to the Court seeking approval of the Winning Bid Agreement, vesting the Real Property Interests in and to the Winning Bidder and authorizing the Receiver to undertake such actions as may be necessary or appropriate to carry out the sale transaction.

#### Other Terms

17. At any time during the Sale Process, the Receiver may, upon reasonable notice to the service list, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.
18. The sale of the Real Property Interests is strictly on an "as is, where is" basis.
19. Other than as provided in the Stalking Horse Bid, no other party shall be paid any break, termination or similar fee. For greater certainty, all Interested Parties, bidders and the Winning Bidder shall be responsible for their own fees, including legal fees, and costs relating to any transaction.
20. The Receiver, in consultation with AIM, may amend, supplement or terminate this sale procedure.

#### Sale Process Timeline

	Event	Timing
1.	Compile a list of interested parties through consultation with the Debtors and the Farber network of advisors and investors in the real estate sector	On or before April 20, 2018
2.	Send a teaser (the " <b>Teaser</b> ") and confidentiality agreement (" <b>CA</b> ") to all parties identified by Farber and the Debtors as potentially having an interest in the purchased assets (the " <b>Purchased Assets</b> ").	Within 2 business days of issuance of the Stalking Horse Sale Process Order (referred to as the " <b>Sale Process Order</b> ")

	Event	Timing
3.	<p>Information pertaining to this opportunity will be posted on the Receiver's website: <a href="http://www.farbergroup.com">www.farbergroup.com</a> which will include:</p> <ul style="list-style-type: none"> <li>• A copy of the Stalking Horse Agreement of Purchase and Sale between the Receiver and American Iron &amp; Metal Company Inc. (the "<b>Purchaser</b>");</li> <li>• The Stalking Horse Sales Process and related terms and conditions;</li> <li>• The Sale Process Order; and</li> <li>• A CA from the Receiver.</li> </ul>	Within 2 business days of issuance of the Sale Process Order
4.	The Proposal Trustee shall advertise the Property and Sale Process in <i>The Globe &amp; Mail</i> (National Edition).	Within 5 business days of the Sale Process Order
5.	Interested Parties expressing an interest in participating in the Stalking Horse Sale Process will be required to execute the CA, upon which execution Interested Parties will receive available information in respect of the Purchased Assets and Stalking Horse Sale Process, including access to the Receiver's virtual data room, once established, which will also include a Confidential Information Memorandum (" <b>CIM</b> ") setting out the purchase opportunity. In addition, parties wishing to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the virtual data room. Any such sites visits are to be coordinated through the Receiver.	Through to no later than May 22, 2018
6.	<p>Interested Parties will have until 4:00 pm Eastern Daylight Time, on Tuesday, May 22, 2018 (the "<b>Bid Deadline</b>") to submit competing bids (hereinafter called "<b>Competing Bids</b>"), each of which must be pursuant to the Stalking Horse Bidding Procedures and, amongst other matters, will include a cash deposit equal to 10% of the Interested Party's Bid for the Property (the "<b>Deposit</b>"). The Deposit will be refunded in the event an Offer, as submitted, is not accepted by the Receiver.</p> <p>Competing Bids are to be made using the Stalking Horse Agreement of Purchase and Sale ("<b>APS</b>") template and are to be without conditions, other than a condition for Court Approval.</p>	On or before 4:00 PM (EDT), May 22, 2018



	Event	Timing
7.	<p>In the event one or more superior bids ("<b>Superior Bids</b>") are lodged with the Receiver, in accordance with the Sale Process Order, the Receiver will distribute the following documents by no later than 5:00 p.m. EDT on May 24, 2018 to the Purchaser and each party that makes a Superior Bid:</p> <ul style="list-style-type: none"> <li>• An invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. on May 25, 2018;</li> <li>• A copy of the bid that the Receiver, in its sole and unfettered discretion, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the "<b>Lead Bid</b>");</li> <li>• A copy of a set of rules for the Auction established by the Receiver acted in its sole and unfettered discretion with a view of maximizing the purchase price of the Purchased Assets</li> </ul> <p>In the event the Receiver selects a Competing Bid at the Auction, there shall be a binding agreement of purchase and sale between the winning bidder ("<b>Winning Bidder</b>"), while the Stalking Horse bidder will be paid the Break Fee.</p>	On or prior to 5:00 p.m. EDT on May 25, 2018.
8.	In the event there is no Superior Bid lodged with the Receiver, the Purchaser shall be declared the Winning Bidder.	On or prior to May 25, 2018
9	Once the Winning Bid Agreement is determined (either item 7 or 8) the Receiver will make a motion to Court to obtain an Approval and Vesting Order on or prior to June 8, 2018	On or prior to June 8, 2018
11	Closing of the sale with the Winning Bidder on or prior to June 20, 2018.	On or prior to June 20, 2018

AMERICAN IRON ORE AND METAL LP

- and -

WAXMAN REALTY COMPANY INC. and 1340923 CANADA INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceedings commenced at Toronto

**REPORT OF THE  
PROPOSED RECEIVER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Steven Graff (#31871V)**  
Tel: 416.865.7726  
Fax: 416.863.1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

*Solicitors for the Proposed Receiver*

# APPENDIX D

**PROPERTY DESCRIPTION:** PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD , S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD OVER PT 2 ON 2R6246 AS IN BC32735

**PROPERTY REMARKS:** PLANNING ACT CONSENT AS IN A259871.

**ESTATE/QUALIFIER:**  
FEE SIMPLE  
LT CONVERSION QUALIFIED

**RECENTLY:**  
FIRST CONVERSION FROM BOOK

**PIN CREATION DATE:**  
2002/03/11

**OWNERS' NAMES**  
AMERICAN IRON & METAL GP INC.  
1340923 ONTARIO INC.

**CAPACITY SHARE**  
TCOM AS TO A 50%  
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2002/03/08 **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 2002/03/11 **</b></p>						
2R1058	1977/05/31	PLAN REFERENCE				C
2R3388	1989/09/28	PLAN REFERENCE				C
A373433	1989/09/29	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	THE CORPORATION OF THE CITY OF BRANTFORD	
2R6246	2004/02/26	PLAN REFERENCE				C
BC32734	2004/03/02	TRANSFER		*** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF BRANTFORD	VICANO DEVELOPMENTS LIMITED	
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD	C
BC37513	2004/05/25	CHARGE		*** COMPLETELY DELETED *** VICANO DEVELOPMENTS LIMITED	CANADIAN IMPERIAL BANK OF COMMERCE	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
BC43220	2004/08/12	NOTICE OF LEASE		*** COMPLETELY DELETED *** VICANO DEVELOPMENTS LIMITED	GLOW METAL TRADING INC.	
BC45182	2004/09/09	CHARGE		*** COMPLETELY DELETED *** VICANO DEVELOPMENTS LIMITED	CIBC MORTGAGES INC.	
BC45183	2004/09/09	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** VICANO DEVELOPMENTS LIMITED	CIBC MORTGAGES INC.	
REMARKS: BC45182						
BC45184	2004/09/09	NO ASSGN RENT SPEC		*** COMPLETELY DELETED *** VICANO DEVELOPMENTS LIMITED	CIBC MORTGAGES INC.	
REMARKS: BC45182						
BC51538	2004/12/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADIAN IMPERIAL BANK OF COMMERCE		
REMARKS: RE: BC37513						
BC116720	2007/06/29	TRANSFER	\$1,899,170	VICANO DEVELOPMENTS LIMITED	1340923 ONTARIO INC.	C
REMARKS: PLANNING ACT STATEMENTS						
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
BC116728	2007/06/29	NO ASSGN RENT GEN		1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
REMARKS: RE: BC116723						
BC120445	2007/08/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGES INC.		
REMARKS: RE: BC45182						
BC178525	2010/02/05	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ARMTEC LIMITED PARTNERSHIP		
BC181230	2010/03/31	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** ARMTEC LIMITED PARTNERSHIP		
REMARKS: BC178525.						
BC224559	2012/06/12	CERT TAX ARREARS		*** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF BRANTFORD		
BC233342	2012/11/30	CT TAX ARREAR CANC		*** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF BRANTFORD		
REMARKS: BC224559.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
BC234034	2012/12/13	APL (GENERAL)		*** COMPLETELY DELETED *** 1340923 ONTARIO INC.		
		REMARKS: DELETE BC43220				
BC234044	2012/12/13	CHARGE	\$3,000,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.	C
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
BC338515	2018/05/25	LIEN	\$88,121	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		C
		REMARKS: TAX LIEN				
BC338516	2018/05/25	LIEN	\$80,108	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		C
		REMARKS: TAX LIEN				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



# APPENDIX E

**Properties**

**PIN** 32281 - 0152 LT  
**Description** PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735  
**Address** 143 ADAMS BOULEVARD  
BRANTFORD

**Claimant(s)**

**Name** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL  
REVENUE  
**Address for Service** Canada Revenue Agency  
166 Frederick  
Street  
Kitchener, ON  
N2H 0A9

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a representative of the Crown.

**Statements**

Schedule: See Schedules

**Signed By**

Katarzyna Clay 166 Frederick St., 2nd Floor acting for Signed 2018 05 25  
Kitchener Applicant(s)  
N2H 0A9

Tel 866-323-0336

Fax 519-570-5424

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

CANADA REVENUE AGENCY 166 Frederick St., 2nd Floor 2018 05 25  
Kitchener  
N2H 0A9

Tel 866-323-0336

Fax 519-570-5424

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.65

Total Paid \$63.65

**File Number**

Claimant Client File Number : ITA-4923-18



NOTICE OF LIEN PURSUANT TO SUBSECTION 223(5) AND (6) OF THE  
INCOME TAX ACT

CONSIDERATION:\$88,121.88

WHEREAS pursuant to subsection 223(2) and (3) of the Income Tax Act, any amount payable or any part of the amount payable by a tax debtor (the amount) and that amount remains unpaid the amount may be certified by the Minister of National Revenue and registered in the Federal Court of Canada (the Court) at which point the certificate is deemed to be a judgment against the tax debtor;

WHEREAS pursuant to subsection 223(5) and (6) of the Income Tax Act, a document which the Court has issued, and which evidences a certificate of that Court upon registration on title or otherwise recorded creates a charge, lien or priority on, or a binding interest in property that the tax debtor holds;

AND WHEREAS 1340923 ONTARIO INC is indebted to the Minister of National Revenue for income taxes and other amounts totalling \$88,121.88 at the date of issuance of the Certificate in Court File Number ITA-4923-18 by the Court, together with interest at such rate or rates as determined from time to time by Section 161 of the Income Tax Act;

AND WHEREAS 1340923 ONTARIO INC has an interest in the lands described in this notice.

NOW THEREFORE TAKE NOTICE that HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE claims a lien and charge against the interest of 1340923 ONTARIO INC in the lands described in this notice.

Such lien charges have priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of this notice.



**Properties**

**PIN** 32281 - 0152 LT  
**Description** PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735  
**Address** 143 ADAMS BOULEVARD  
BRANTFORD

**Claimant(s)**

**Name** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL  
REVENUE  
**Address for Service** Canada Revenue Agency  
166 Frederick  
Street  
Kitchener, ON  
N2H 0A9

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a representative of the Crown.

**Statements**

Schedule: See Schedules

**Signed By**

Katarzyna Clay 166 Frederick St., 2nd Floor acting for Signed 2018 05 25  
Kitchener Applicant(s)  
N2H 0A9

Tel 866-323-0336

Fax 519-570-5424

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

CANADA REVENUE AGENCY 166 Frederick St., 2nd Floor 2018 05 25  
Kitchener  
N2H 0A9

Tel 866-323-0336

Fax 519-570-5424

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$63.65

**Total Paid** \$63.65

**File Number**

**Claimant Client File Number :** ETA-2808-18

186

NOTICE OF LIEN PURSUANT TO SUBSECTION 316 (4) AND (5)  
OF THE EXCISE TAX ACT

CONSIDERATION: \$80,108.11

WHEREAS pursuant to subsection 316 (1) and (2) of the Excise Tax Act, any amount payable or any part of the amount payable by a tax debtor (the amount) and that amount remains unpaid the amount may be certified by the Minister of National Revenue and registered in the Federal Court of Canada (the Court) at which point the certificate is deemed to be a judgment against the tax debtor;

WHEREAS pursuant to subsection 316 (4) and (5) of the Excise Tax Act, a document which the Court has issued, and which evidences a certificate of that Court upon registration on title or otherwise recorded creates a charge, lien or priority on, or a binding interest in property that the tax debtor holds;

AND WHEREAS 1340923 ONTARIO INC is indebted to the Minister of National Revenue for Goods and Services Tax and other amounts as set out in this notice at the date of issuance of the Certificate in Court File Number ETA-2808-18 by the Court, together with interest at such rate or rates as determined from time to time by Section 280 of the Excise Tax Act;

AND WHEREAS 1340923 ONTARIO INC has an interest in the lands described in this notice.

NOW THEREFORE TAKE NOTICE that HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE claims a lien and charge against the interest of 1340923 ONTARIO INC in the lands described in this notice.

Notwithstanding the date of registration of this lien, a portion of the lien takes priority over all other encumbrances except those that fall within the definition of "prescribed security interest" in Regulation 2201 of the Income Tax Act. This priority is claimed pursuant to subsections 227(4) and (4.1) of the Income Tax Act, and/or section 222 of the Excise Tax Act.



# APPENDIX F

PROPERTY DESCRIPTION: PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669, EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
ABSOLUTE

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1996/07/22

OWNERS' NAMES

WAXMAN REALTY COMPANY INC.  
AMERICAN IRON & METAL COMPANY INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/07/22 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/07/22**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/07/19 **</b></p>						
119980	1961/01/25	BYLAW				C
H63200	1975/10/07	NOTICE			THE CORPORATION OF THE CITY OF BURLINGTON	C
20R4669	1980/02/21	PLAN REFERENCE				C
H147986	1980/03/03	TRANSFER		*** COMPLETELY DELETED ***	DOVER INDUSTRIES LIMITED	
H271116	1986/05/07	NOTICE			THE CORPORATION OF THE CITY OF BURLINGTON	C
HR732327	2009/02/04	TRANSFER		*** COMPLETELY DELETED *** DOVER INDUSTRIES LIMITED	7113684 CANADA LIMITED	
HR823465	2010/03/03	TRANSFER		*** COMPLETELY DELETED *** 7113684 CANADA LIMITED	DOVER INVESTCO INC.	
HR868013	2010/08/12	TRANSFER	\$4,220,000	DOVER INVESTCO INC.	WAXMAN REALTY COMPANY INC.	C
REMARKS: PLANNING ACT STATEMENTS						
HR868016	2010/08/12	CHARGE		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.	ROYNAT INC.	
HR868017	2010/08/12	NOTICE OF LEASE		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.	ELECTRO-SHRED LTD.	
HR868018	2010/08/12	NOTICE OF LEASE		WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.	C

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
HR868022	2010/08/12	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.	ROYNAT INC.	
REMARKS: HR868016.						
HR960263	2011/09/13	CHARGE		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.	ROYAL BANK OF CANADA	
HR976906	2011/11/18	CHARGE		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.	KAM, MICHAEL	
HR1060497	2012/10/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
REMARKS: HR960263.						
HR1070829	2012/12/13	APL (GENERAL)		*** COMPLETELY DELETED *** WAXMAN REALTY COMPANY INC.		
HR1070830	2012/12/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** KAM, MICHAEL		
REMARKS: HR976906.						
HR1070901	2012/12/13	CHARGE	\$3,000,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.	C
HR1071402	2012/12/14	TRANSFER	\$2,500,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
HR1142193	2013/10/23	NOTICE	\$2	WAXMAN REALTY COMPANY INC. AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL GP INC.	C
REMARKS: HR1070901						
HR1196239	2014/07/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYNAT INC.		
REMARKS: HR868016.						
HR1321803	2015/12/09	APL CH NAME OWNER		AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.	C
HR1331162	2016/01/21	NOTICE OF LEASE		AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.	C
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA	C
REMARKS: HR1331162.						
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
HR1446119	2017/04/11	LIEN	\$41,006	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		C
REMARKS: TAX LIEN						
HR1446123	2017/04/11	LIEN	\$81,797	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		C
REMARKS: TAX LIEN						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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# APPENDIX G

**AGREEMENT OF PURCHASE AND SALE****BETWEEN**

**A. FARBER & PARTNERS INC.,**  
solely in its capacity as the Court-appointed receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc., and  
not in its personal capacity or in any other capacity

- and -

**AMERICAN IRON & METAL COMPANY INC.**

Dated: June 5, 2018

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## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 5th day of June, 2018.

**BETWEEN:**

**A. FARBER & PARTNERS INC.,**  
solely in its capacity as the Court-appointed receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc., and  
not in its personal capacity or in any other capacity

(in such capacity, the “**Receiver**”)

- and -

**AMERICAN IRON & METAL COMPANY INC.**  
(the “**Purchaser**”)

**WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on May 25, 2018 (the “**Receivership Order**”), A. Farber & Partners Inc. (“**Farber**”) was appointed as the Receiver, without security, of all the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Ontario Inc. (“**134Co.**”, and together with Waxman, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof;

**AND WHEREAS** pursuant to the provisions of the Receivership Order, the Receiver has the power to sell all or any part of the Property (as defined below), subject to Court approval;

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

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

### ARTICLE 1 DEFINED TERMS

#### 1.1 Definitions.

In this Agreement:

“**Accounts Payable**” means all amounts owing by the Debtor to any Person incurred in connection with the purchase of goods or services in the ordinary course of the Business;



**“Agreement”** means this agreement of purchase and sale, including all schedules herein, and references to **“article”**, **“section”** or **“schedule”** mean the specified article of, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and, unless otherwise stated, not to any particular section or other portion of this Agreement;

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

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

**“Assignable Assets”** has the meaning given in Section 3.1(3) herein;

**“Assumption Agreement”** has the meaning given in Section 15.10 herein;

**“Auction”** has the meaning given in Section 6.3 herein;

**“Auction Rules”** has the meaning given in Section 6.3 herein;

**“BDC”** means Business Development Bank of Canada;

**“BDC Charge”** means the Charge in favour of BDC registered as Instrument No. BC116723 on title to those parts of the Real Property municipally known as 143 Adams Boulevard, Brantford, Ontario;

**“Brantford Property”** means those lands and premises known municipally and legally described under the heading **“Brantford Property”** in **Schedule “C”** hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and enuring to the benefit thereof; and (ii) all buildings, improvements and structures thereon and the Fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

**“Break Fee”** means \$150,000 payable to the Purchaser in accordance with Section 6.1 herein;

**“Burlington Property”** means those lands and premises known municipally and legally described under the heading **“Burlington Property”** in **Schedule “C”** hereto, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and enuring to the benefit thereof; and (ii) all buildings, improvements and structures thereon and the Fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

**“Business”** means the business carried on by the Debtor;

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

**“Chattels”** means all equipment, machinery, inventory, supplies and other chattels and tangible personal property located at, situated upon or used in connection with the Real Property;

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

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

**“Closing Date”** means the date that is the later of: (i) the first Business Day following the date that is ten (10) days following the date on which the Approval and Vesting Order is granted; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined;

**“Closing Deliveries”** means the agreements, instruments and other documents and items to be delivered by the Receiver to the Purchaser or the Purchaser’s Solicitors pursuant to Section 7.3 herein and the agreements, instruments, monies and other documents and items to be delivered by the Purchaser to the Receiver or the Receiver’s Solicitors pursuant to Section 7.4 herein;

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

**“Competing Bid”** has the meaning given in Section 6.2 herein;

**“Contracts”** means all the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party or has an interest in pursuant to the Joint Venture Agreements;

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

**“CRA”** means Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue;

**“CRA Liens”** means, collectively, the Liens in favour of the CRA registered as Instrument Nos. HR1446119 and HR1446123 on title to those parts of the Real Property municipally known as 4350 Harvester Road, Burlington, Ontario;



**“Credit Bid Amount”** means the sum of TWO MILLION THREE HUNDRED THIRTY-SIX THOUSAND SEVEN DOLLARS AND TEN CENTS (\$2,336,007.10) which represents all the debt and accrued interest thereon outstanding under the loans provided by the Purchaser to the Debtor, which loans are secured by the Security, and are being credit bid by the Purchaser.

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

**“Deposit”** has the meaning given in Section 4.2 herein;

**“DRA”** has the meaning given in Section 7.6 herein;

**“Encumbrances”** means any charge, mortgage, lien, pledge, Claim, restriction, restrictive covenant, security interest, debenture, hypothec, prior claim, trust deed, assignment by way of security, conditional sale contract or other title retention agreements or similar interests or instruments, easement, right of way, development or like agreement, license, lease, defect, encroachment or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights, whether registered or unregistered, and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario;

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

**“Excluded Assets”** means the Debtor’s right, title and interest in and to the following:

- (a) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor;
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate or credit of Taxes for the period prior to the Closing Date; and
- (c) any other Property that is not included in the definition of Purchased Assets;

**“Excluded Liabilities”** has the meaning given in Section 3.3 herein;

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

**“Fixtures”** means all fixtures of every nature and kind incorporated in, situate upon and used in connection with the Real Property, including heating, ventilating, air-conditioning, plumbing, electrical, sprinkler and drainage systems but specifically excluding any fixtures and other tangible personal property covered by any equipment lease or owned by any Tenant;

**“Governmental Authority”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts,

bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means harmonized sales tax imposed under Part IX of the ETA;

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

**"Joint Venture Agreements"** means, collectively, the joint venture agreement between Waxman, American Iron & Metal LP and American Iron & Metal GP Inc. and the joint venture agreement between 134Co., American Iron & Metal LP and American Iron & Metal GP Inc., each dated December 14, 2012, as same may be amended from time to time;

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

**"Lead Bid"** has the meaning given in Section 6.3 herein;

**"Leases"** means all executed and subsisting offers to lease, agreements to lease, leases, renewals of leases, tenancy agreements, rights of occupation, licences or other occupancy agreements granted by or on behalf of the Debtor and/or American Iron & Metal LP and American Iron & Metal GP Inc. (or any of their successors or assigns) or any of their predecessors in title to possess or occupy space within the Real Property or any part thereof now or hereafter, together with all security, guarantees and indemnities of the Tenants' obligations thereunder, in each case as amended, extended, renewed or otherwise modified;

**"Notice"** has the meaning given in Section 15.3 herein;

**"Parties"** means the Receiver and the Purchaser;

**"Permits"** means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Purchased Assets;

**"Permitted Encumbrances"** means all those Encumbrances described in **Schedule "B"** hereto;

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

**"Personal Property Leases"** means all leases of personal or moveable property that relate to the Business, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof;

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

**“Purchase Price”** has the meaning set out in Section 4.1 herein;

**“Purchased Assets”** means all of the Debtor’s right, title and interest in and to:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Contracts, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;
- (d) the Warranty Rights, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;
- (e) the Chattels;
- (f) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees; and
- (g) the Leases;

**“Purchaser”** means American Iron & Metal Company Inc., a corporation duly formed and validly subsisting under the federal laws of Canada;

**“Purchaser’s Solicitors”** means McMillan LLP;

**“Real Property”** means collectively, the Burlington Property and the Brantford Property;

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

**“Receiver’s Certificate”** has the meaning given in Section 7.5 herein;

**“Receiver’s Solicitors”** means Aird & Berlis LLP;

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

**“Registry Office”** has the meaning given in Section 7.1 herein;

**“Rights”** has the meaning given in Section 3.1(3) herein, but only has such meaning in such section;

**“Sale Process”** has the meaning given in Section 6.1 herein;

**“Sale Process Orders”** has the meaning given in Section 6.1 herein;

“**Security**” means the security interest granted by the Debtor in favour of the Purchaser over all the Debtor’s present and after acquired real and personal property;

“**Stalking Horse Bid**” has the meaning given in Section 6.1 herein;

“**Superior Bid**” has the meaning given in Section 6.2 herein;

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Tenant**” means any Person entitled to occupy premises located on the Real Property pursuant to a Lease;

“**TERS**” has the meaning given in Section 7.6 herein;

“**Third Party**” has the meaning given in Section 3.1 herein;

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

“**Warranty Rights**” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) of the Debtor against manufacturers, contractors or any other Person which apply to the Real Property, but only to the extent that the same are capable of being assigned;

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

“**Winning Bid**” has the meaning given in Section 6.3 herein; and

“**Winning Bid Agreement**” has the meaning given in Section 6.3 herein.

## ARTICLE 2 SCHEDULES

### 2.1 Schedules.

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

<u>Schedule</u>	<u>Description</u>
Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Real Property
Schedule D	Claims

### ARTICLE 3 AGREEMENT TO PURCHASE

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

- (1) Relying on the representations and warranties herein, and subject to Article 6 herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all its rights, claims and demands whatsoever in the Purchased Assets.
- (3) Without in any way limiting the obligations of the Receiver to use reasonably best-effort to obtain consents to assignments as contemplated in this Agreement, this Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(3), collectively, the “**Rights**”) under any Permits, Contracts or Warranty Rights (collectively, the “**Assignable Assets**”) which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
  - (a) the Receiver will, at the request, direction and sole cost of the Purchaser, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required in respect of the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;
  - (b) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser; and
  - (c) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

#### 3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### 3.3 Excluded Liabilities.

Other than any liabilities under the BDC Charge, the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Real Property or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

### 3.4 BDC Charge

The Purchaser agrees to assume the BDC Charge on Closing at its sole cost and expense.

## ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

### 4.1 Purchase Price.

Subject to Article 6 herein, the purchase price for the Purchased Assets shall be the aggregate of SIX MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS (\$6,650,000.00) (the "**Purchase Price**").

### 4.2 Deposit.

- (1) Within two (2) Business Days of the date of this Agreement, the Purchaser shall pay the Receiver a deposit by certified cheque or wire of THREE HUNDRED SIXTY THOUSAND DOLLARS (\$360,000.00) (the "**Deposit**"), which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other

termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account, which Deposit and interest shall accrue to the benefit of the Purchaser from the date of this Agreement until the Closing Date or other termination of this Agreement and shall be credited to the Purchaser on the Closing Date.

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

Subject to Article 6 herein, the Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit, and any interest accrued thereon, shall be applied against the Purchase Price;
- (b) a credit in the amount of the Credit Bid Amount;
- (c) a credit in an amount determined by the Receiver or the Court as recoverable by the Purchaser from the Debtor for the discharge of the BDC Charge; and
- (d) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit and credits set out in subsection 4.3(b) and (c) above, shall be paid by the Purchaser to the Receiver's Solicitors on Closing.

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

- (1) The Purchase Price shall be allocated as follows:
  - (a) FIVE MILLION DOLLARS (\$5,000,000.00) for Purchased Assets consisting of, located on or used in connection with the Burlington Property; and
  - (b) ONE MILLION SIX HUNDRED AND FIFTY THOUSAND (\$1,650,000.00) for the Purchased Assets consisting of, located on or used in connection with the Brantford Property.
- (2) Subject to Section 4.4 above, with respect to each of the Burlington Property and the Brantford Property, the Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

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

- (1) There shall be no adjustments to the Purchase Price.

## ARTICLE 5 TAXES

### 5.1 Taxes.

Provided that the Purchaser is selected as the Winning Bidder, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

## ARTICLE 6 SALE APPROVAL PROCEEDINGS

### 6.1 The Sale Process.

Each of the Parties acknowledges and agrees that by no later than June 5, 2018, the Receiver shall obtain orders (collectively, the “**Sale Process Orders**”) from the Court which, *inter alia*, set out the terms and conditions of and a timetable for a bidding, auction and sale process with respect to the Purchased Assets (the “**Sale Process**”). The Sale Process Orders shall recognize this Agreement, and in particular the Purchase Price, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”), and shall also provide for a marketing process of the Purchased Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver. The Purchaser acknowledges and agrees that the aforementioned Sale Process is in contemplation of determining whether a materially higher price than that contemplated in the Stalking Horse Bid can be obtained for the Purchased Assets.

In consideration for the Purchaser’s expenditure of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, the Sale Process Orders shall also provide for liquidated damages in the amount of the Break Fee, payable by the Receiver to the Purchaser in the event that a materially higher offer than the Purchase Price advanced by the Purchaser pursuant to the terms herein is obtained for the Purchased Assets through the Sale Process and, as a consequence, the Receiver sells all or substantially all the Purchased Assets to a person or entity other than the Purchaser.

In the event that the Stalking Horse Bid is not chosen to be the Winning Bid, the Break Fee shall be payable to the Purchaser from the sale proceeds derived from the Winning Bid. Each of the Parties acknowledges and agrees that the Break Fee represents a fair and reasonable estimate of the costs and damages which will be incurred by the Purchaser as a result of non-completion of this Agreement, and is not intended to be punitive in nature or to discourage competitive bidding for the Purchased Assets.



## 6.2 Competing Bids.

In addition to the foregoing, the Sale Process Orders shall also provide that in order to be accepted by the Receiver, any competing bid (each, a “**Competing Bid**”) for the Purchased Assets must be on substantially the same terms and conditions as the terms and conditions contained in this Agreement, except with respect to the Purchase Price (any Competing Bid accepted by the Receiver as a superior bid to the Stalking Horse Bid being, in each case, a “**Superior Bid**”).

In order for any Competing Bid to be accepted by the Receiver as a Superior Bid, such Competing Bid must meet all the following minimum criteria:

- (a) it must be received by the Receiver, in its entirety, by no later than 4:00 p.m. (Toronto time) on July 10, 2018;
- (b) it must be accompanied by a duly executed agreement of purchase and sale, blacklined against this Agreement, showing any and all variations from this Agreement, and a deposit in an amount equal to the sum of ten percent of the aggregate purchase price in such Competing Bid by way of certified cheque or wire, payable pursuant to the terms of such Competing Bid, and which is not subject to any encumbrances;
- (c) it must remain open for acceptance and completion until 11:59 p.m. (Toronto time) on August 3, 2018;
- (d) it must be on terms no less favourable and no more burdensome or conditional than the terms of this Agreement;
- (e) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder’s obligation to close that are not otherwise contained in this Agreement;
- (f) it must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by such Competing Bid on the terms specified therein; and
- (g) it must be for an aggregate purchase price at least equal to the sum of the Purchase Price plus the Break Fee plus a minimum overbid of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

## 6.3 The Winning Bid and the Auction Process.

In the event that one or more Superior Bid is lodged with the Receiver in accordance with Section 6.2 hereof, the Sale Process Orders shall provide that the Receiver will distribute the following documentation by no later than 5:00 p.m. (Toronto time) on July 12, 2018 to the Purchaser and the maker(s) of each Superior Bid:

- (a) an invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. (Toronto time) on July 13, 2018 at the offices of the Receiver (the “**Auction**”);
- (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all the Superior Bids (the “**Lead Bid**”); and
- (c) a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Purchased Assets (the “**Auction Rules**”), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus the Break Fee, solely for the purpose of determining the successful bid at the Auction; and (iii) the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

In the event that the Receiver selects any Competing Bid as the Winning Bid, the Sale Process Orders shall provide the Receiver will pay the Break Fee to the Purchaser immediately upon receipt of the sale proceeds on closing of the Winning Bid.

Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the “**Winning Bidder**”) and the Receiver (the “**Winning Bid Agreement**”), in which case the Winning Bid Agreement shall be constituted by:

- (a) this Agreement or the agreement of purchase and sale submitted to the Receiver by the Winning Bidder, as the case may be, and as amended pursuant to the Auction; and
- (b) the acceptance of the Winning Bid.

In the event that there is no Superior Bid lodged with the Receiver in accordance with Section 6.2 hereof, the Sale Process Orders shall provide that this Agreement and the Purchaser shall be declared to be the Winning Bid, the Winning Bid Agreement and the Winning Bidder, as applicable.

Once the Winning Bid Agreement is determined, the Receiver will make a motion to the Court in order to obtain the Approval and Vesting Order.

#### **6.4 Court-Specified Time Periods.**

Where any of the time periods specified in Sections 6.1 through 6.3 of this Agreement are subject to be established by Court Order, and in the event that the Court establishes a date different than the date set out in this Agreement, then the corresponding date established by such provisions of this Agreement shall be deemed to be amended to accord with the Court established date, provided that no such amendment shall be deemed to have occurred without the express written consent of the Purchaser if the effect of such amendment is to delay the Closing Date by any period greater than 15 days.

### **ARTICLE 7 CLOSING ARRANGEMENTS**

#### **7.1 Closing and Closing Procedure.**

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's Solicitors, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing. Subject to Section 7.6 hereof, on the Closing Date, all Closing Deliveries and monies shall be delivered at the office of the Receiver's Solicitors, held in escrow and released upon satisfaction of such terms as the Receiver and the Purchaser shall both determine, acting reasonably (such terms shall include registration of the Application for Vesting Order in the relevant land registry office (the "**Registry Office**")). In the event that the Registry Office is not open for business on the Closing Date, then the Closing Date shall be deemed to be the day next following on which the Registry Office is open for business.

#### **7.2 Tender.**

The following provisions shall govern any tender to be made by either party to this Agreement:

- (1) any tender of documents under this Agreement may be made personally or by facsimile or PDF;
- (2) monies, other than the Deposit (which must be tendered by a certified cheque or by a bank draft, either to be drawn upon one of Canada's five largest Schedule 1 chartered banks), must be tendered by wire transfer of immediately available funds to the account specified by the receiving Party;
- (3) neither of the Parties shall be obligated to attend personally upon the other or the other's solicitors with the Closing Deliveries;
- (4) notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Receiver upon the Purchaser when the Receiver's Solicitors have:
  - (a) delivered all Closing Deliveries required to be delivered by the Receiver to the Purchaser pursuant to Section 7.3 herein;

- (b) advised the Purchaser's Solicitors in writing that the Receiver is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
  - (c) completed all steps required by TERS to complete this Transaction that can be performed or undertaken by the Receiver's Solicitors without the cooperation or participation of the Purchaser's Solicitors; and
- (5) notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Purchaser upon the Receiver, when the Purchaser's Solicitors have:
- (a) delivered the balance due at Closing and all the Closing Deliveries required to be delivered by the Purchaser to the Receiver pursuant to Section 7.4 herein;
  - (b) advised the Receiver's Solicitors in writing that the Purchaser is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
  - (c) completed all steps required by TERS to complete this Transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Receiver's Solicitors.

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

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser's Solicitors at Closing or on such other date as expressly provided herein, all in a form satisfactory to the Purchaser, acting reasonably:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate executed by the Receiver;
- (2) a final statement of adjustments prepared in accordance with Section 4.5 hereof;
- (3) an assignment and assumption agreement for all Leases relating to the period from and after the Closing Date;
- (4) an assumption statement and mortgage assumption agreement relating to the BDC Charge;
- (5) subject to Section 3.1(3) hereof, an assignment and assumption agreement for all Contracts, Warranty Rights and Permits (in each case, to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser in accordance with the terms and conditions of Section 3.1(3) hereof;
- (6) a certificate from the Receiver, dated as of the Closing Date, certifying:

- (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
  - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
  - (c) the non-merger specified in Section 15.2 and elsewhere herein; and
- (7) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 herein has been fulfilled, performed or waived as of the Closing Time.

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

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver's Solicitors at Closing or on such other date as expressly provided herein, all in a form satisfactory to the Receiver, acting reasonably:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (2) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with, and together with the other deliverables required by the terms and conditions of Section 5.1 hereof;
- (3) an assignment and assumption agreement for all Leases relating to the period from and after the Closing Date;
- (4) a mortgage assumption agreement relating to the BDC Charge;
- (5) subject to Section 3.1(3) hereof, an assignment and assumption agreement for all Contracts, Warranty Rights and Permits (in each case, to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser in accordance with the terms and conditions of Section 3.1(3) hereof;
- (6) a certificate from the Purchaser, dated as of the Closing Date, certifying:
  - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
  - (b) the non-merger specified in Section 15.2 and elsewhere herein; and

- (7) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.3 herein has been fulfilled, performed or waived as of the Closing Time.

#### **7.5 Receiver's Certificate.**

Upon receipt of written confirmation from the Purchaser that all the conditions contained in Section 8.3 herein have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all the conditions contained in Section 8.1 herein, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order (the "**Receiver's Certificate**"), and shall file same with the Court.

#### **7.6 Electronic Registration.**

In the event that the electronic registration system ("**TERS**") is operative in the Registry Office, the following provisions shall apply:

- (1) the Receiver and the Purchaser hereby authorize the Receiver's Solicitors and the Purchaser's Solicitors, respectively, to enter into a document registration agreement with the other Party's solicitor (the "**DRA**"), establishing the procedures and timing for completing this Transaction, provided that the DRA shall in no way be inconsistent with any of the terms or conditions of this Agreement; and
- (2) the delivery and exchange of the Closing Deliveries:
  - (a) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
  - (b) shall be governed by the DRA, pursuant to which the Receiver's Solicitors and Purchaser's Solicitors shall hold all Closing Deliveries in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.

### **ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING**

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

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

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;

- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (5) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order.

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

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

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

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

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

- (1) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Receiver contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (3) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (4) the Purchaser obtaining the consent of the BDC to assume the BDC Charge on Closing;
- (5) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (6) the Court shall have issued the Sale Process Orders and the Approval and Vesting Order.

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

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

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

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

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

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Sale Process Orders and the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and, subject to the Sale Process Orders and the Approval and Vesting Order, convey all right, title and interest of the Debtor in and to the Purchased Assets; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

### **ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

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

- (1) the Purchaser is a corporation duly formed and validly subsisting under the federal laws of Canada;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the



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

- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date.

## **ARTICLE 11 COVENANTS**

### **11.1 Mutual Covenants.**

Subject to Article 6 hereof, each of the Parties hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

### **11.2 Receiver Covenants.**

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such actions as are necessary to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

### **11.3 Purchaser Covenants.**

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete the applicable tax elections in accordance with Section 5.1 hereof and to execute all necessary forms related thereto.

## **ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING**

### **12.1 Possession of Purchased Assets.**

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and

the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

## **12.2 Examination of Title and Access to the Purchased Assets.**

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

## **12.3 Risk.**

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this section, substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit together with all interest accrued thereon shall be returned to the Purchaser forthwith.

**ARTICLE 13  
AS IS, WHERE IS**

**13.1 Condition of the Purchased Assets.**

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

**ARTICLE 14  
TERMINATION**

**14.1 Termination of this Agreement.**

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to Section 8.2 hereof by the Receiver;
- (3) pursuant to Section 8.4 hereof by the Purchaser; or
- (4) pursuant to Section 12.3 hereof.

**14.2 Remedies for Breach of Agreement.**

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser's right to pursue all legal remedies with respect to such breach shall survive such termination, and the Deposit together with all interest accrued thereon and without deduction, shall be returned by the Receiver to the Purchaser forthwith. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as

liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

#### **14.3 Termination If No Breach of Agreement.**

If the Purchaser is not determined to be the Winning Bidder, or if this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of one of the Parties, then:

- (1) the Deposit, together with all interest thereon, shall be returned by the Receiver to the Purchaser forthwith and all other obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement; and
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

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

#### **15.1 Further Assurances.**

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

#### **15.2 Survival Following Completion.**

Notwithstanding any other provision of this Agreement, Section 4.5, Article 9, Article 10, Section 14.2 and Section 14.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of Farber as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

#### **15.3 Notice.**

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

(a) to the Receiver:

A. Farber & Partners Inc.  
150 York Street, Suite 1600  
Toronto, ON M5H 3S5

Attention: Hylton Levy and Paul Denton  
Tel: (416) 496-3070 / (416) 496-3773  
Email: [hlevy@farberfinancial.com](mailto:hlevy@farberfinancial.com) / [pdenton@farberfinancial.com](mailto:pdenton@farberfinancial.com)

and a copy to the Receiver's counsel to:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Steven L. Graff and Jeremy Nemers  
Tel: (416) 865-7726 / 416-865-7724  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

(b) to the Purchaser:

**[American Iron & Metal Company Inc.  
9100, boul. Henri-Bourassa Est  
Montréal, QC H1E 2S4]**

Attention: **[Kamila Wirpszo]**  
Email: **[[kwirpszo@aim-global.com](mailto:kwirpszo@aim-global.com)]**

and a copy to the Purchaser's counsel to:

McMillan LLP  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

Attention: Wael Rostom  
Tel: (416) 865-7790  
Email: [wael.rostom@mcmillan.ca](mailto:wael.rostom@mcmillan.ca)

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any

Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **15.4 Waiver.**

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

#### **15.5 Consent.**

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

#### **15.6 Governing Law.**

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

#### **15.7 Entire Agreement.**

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

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

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

#### **15.9 Time Periods.**

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

**15.10 Assignment.**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until Closing, the Purchaser shall have the right to direct that title to the Real Property be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that: (a) the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into; and (b) the Purchaser shall remain liable for all obligations and liabilities hereunder.

**15.11 Expenses.**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the Transaction contemplated hereby shall be paid by the Party incurring such costs and expenses.

**15.12 Severability.**

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

**15.13 No Strict Construction.**

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

**15.14 Cumulative Remedies.**

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**15.15 Currency.**

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

**15.16 Receiver's Capacity.**

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

**15.17 Planning Act.**

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

**15.18 No Third Party Beneficiaries.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

**15.19 Number and Gender.**

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

**15.20 Counterparts.**

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

*[The remainder of this page is left blank intentionally.]*



IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

AMERICAN IRON & METAL COMPANY INC.

Per: 

Name: HERBERT BLACK

Authorized Signing Officer

ACCEPTED by the Receiver this \_\_\_\_ day of \_\_\_\_\_, 2018

A. FARBER & PARTNERS INC., solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first above written.

**AMERICAN IRON & METAL COMPANY INC.**

Per: \_\_\_\_\_

Name:

Authorized Signing Officer

ACCEPTED by the Receiver this 5<sup>th</sup> day of June, 2018

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity


Per: \_\_\_\_\_

Name:

Title:

  
Name: HULTON LEVY  
Title: PARTNER




**SCHEDULE "A"**  
**APPROVAL AND VESTING ORDER**

Court File No. 

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

THE HONOURABLE  
JUSTICE

)  
)  
)

 DAY, THE   
DAY OF , 2018

B E T W E E N :



Applicant


- and -







Respondent

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties of Waxman Realty Company Inc. ("**Waxman**") and 1340923 Ontario Inc. (together with Waxman, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the "**Purchaser**"), as purchaser, dated ,

2018 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “” to the Report of the Receiver dated , 2018 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the “**Purchased Assets**” in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of  sworn , 2018, 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 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, including, without limitation, all of the Debtor’s right, title and interest in and to the Real Property (as defined herein) listed on Schedule B hereto, 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 [REDACTED] made [REDACTED], 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the

sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **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.

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.

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## Schedule "A" – Form of Receiver's Certificate

Court File No. 

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN :



Applicant

- and -







Respondent

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

I. Pursuant to an Order of the Honourable Justice  of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated , 2018, A. Farber & Partners Inc. ("**Farber**") was appointed as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Waxman Realty Company Inc. ("**Waxman**") and 1340923 Ontario Inc. (together with Waxman, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the "**Property**").

II. Pursuant to an Order of the Court dated , 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and American Iron & Metal Company Inc. (the "**Purchaser**"), as purchaser, dated , 2018 (the "**Sale Agreement**"), and provided for the



vesting in the Purchaser of all the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 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.

III. 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of the Debtor, and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name:

Title:



**Schedule "B" – Legal Description of the Real Property****PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

## Schedule "C"

Instruments to Be Deleted from Title to Real PropertyPIN 07034-0014 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
HR868013	2010/08/12	TRANSFER	\$4,220,000	DOVER INVESTCO INC.	WAXMAN REALTY COMPANY INC.
HR1070901	2012/12/13	CHARGE	\$3,000,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1142193	2013/10/23	NOTICE	-	WAXMAN REALTY COMPANY INC. AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL GP INC.
HR1446119	2017/04/11	LIEN	\$41,006	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-
HR1446123	2017/04/11	LIEN	\$81,797	HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY C THE MINISTER OF NATIONAL REVENUE	-

PIN 32281-0152 (LT)

Reg. No.	Date	Type	Amount	Parties From	Parties To
BC116720	2007/06/29	TRANSFER	\$1,899,170	VICANO DEVELOPMENTS LIMITED	1340923 ONTARIO INC.
BC234044	2012/12/13	CHARGE	\$3,000,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

Claims

1. NASG Canada Inc. and Camille Bouliane and al., Court File Nr. CV-14-10606-00CL.
2. Morris Waxman and al. and Chester Waxman and al, Court File Nr. 07-CL-6901.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants****PIN 07034-0014 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
119980	1961/01/25	BYLAW	-	-	-
H63200	1975/10/07	Notice	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
20R4669	1980/02/21	PLAN REFERENCE	-	-	
H271116	1986/05/07	NOTICE	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
HR868018	2010/08/12	NOTICE OF LEASE	-	WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.
HR1071402	2012/12/14	TRANSFER	\$2,500,000	WAXMAN REALTY COMPANY INC.	AMERICAN IRON & METAL GP INC.
HR1321803	2015/12/09	APL CH NAME OWNER	-	AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.
HR1331162	2016/01/21	NOTICE OF LEASE	-	AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA	-

**PIN 32281-0152 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
2R1058	1977/05/31	PLAN REFERENCE	-	-	-
2R3388	1989/09/28	PLAN REFERENCE	-	-	-
2R6246	2004/02/26	PLAN REFERENCE	-	-	-
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC116728	2007/06/29	NO ASSGN RENT GEN	-	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**

**PIN 07034-0014 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
I19980	1961/01/25	BYLAW	-	-	-
H63200	1975/10/07	Notice	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
20R4669	1980/02/21	PLAN REFERENCE	-	-	
H271116	1986/05/07	NOTICE	-	-	THE CORPORATION OF THE CITY OF BURLINGTON
HR868018	2010/08/12	NOTICE OF LEASE	-	WAXMAN REALTY COMPANY INC.	WAXMAN INDUSTRIAL SERVICES CORP.
HR1321803	2015/12/09	APL CH NAME OWNER	-	AMERICAN IRON & METAL GP INC.	AMERICAN IRON & METAL COMPANY INC.
HR1331162	2016/01/21	NOTICE OF LEASE	-	AMERICAN IRON & METAL COMPANY INC. WAXMAN REALTY COMPANY INC.	WC ENERCO INC.
HR1331179	2016/01/21	NO CHARGE LEASE	\$11,797,135	WC ENERCO INC.	ROYAL BANK OF CANADA
HR1331180	2016/01/21	NO SEC INTEREST	\$11,797,135	ROYAL BANK OF CANADA	-

**PIN 32281-0152 (LT)**

Reg. No.	Date	Type	Amount	Parties From	Parties To
2R1058	1977/05/31	PLAN REFERENCE	-	-	-
2R3388	1989/09/28	PLAN REFERENCE	-	-	-
2R6246	2004/02/26	PLAN REFERENCE	-	-	-
BC32735	2004/03/02	TRANSFER EASEMENT	\$1	VICANO DEVELOPMENTS LIMITED	THE CORPORATION OF THE CITY OF BRANTFORD
BC116723	2007/06/29	CHARGE	\$2,050,000	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC116728	2007/06/29	NO ASSGN RENT GEN	-	1340923 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA
BC234161	2012/12/14	TRANSFER	\$750,000	1340923 ONTARIO INC.	AMERICAN IRON & METAL GP INC.

**SCHEDULE "C"**  
**LEGAL DESCRIPTION OF REAL PROPERTY**

**BURLINGTON PROPERTY:**

**PIN 07034-0014 (LT)**

PCL 7-8, SEC N12; PT LT 7, CON 3 SOUTH OF DUNDAS STREET, PT 1 20R4669,  
EXCEPT PT 9 20R9466.; CITY OF BURLINGTON

Municipal Address: 4350 Harvester Road, Burlington, Ontario

**BRANTFORD LANDS:**

**PIN 32281-0152 (LT)**

PT LT 39-40 CON 3 BRANTFORD CITY PTS 1 & 2 ON 2R6246 ; CITY OF BRANTFORD ,  
S/T EASEMENT IN FAVOUR OF THE CORPORATION OF THE CITY OF BRANTFORD  
OVER PT 2 ON 2R6246 AS IN BC32735

Municipal Address: 143 Adams Boulevard, Brantford, Ontario

**SCHEDULE D  
CLAIMS**

1. Morris Waxman et. al. v. Chester Waxman et. al, 07-CL-6901
2. NASG Canada Inc. v. Joseph Howard Camile Bouliane et. al, CV-14-10606-00CL





# AMENDING AGREEMENT

THIS AMENDING AGREEMENT (the "Agreement") is made as of the 31<sup>st</sup> day of July, 2018.

BETWEEN:

**A. FARBER & PARTNERS INC.,**  
solely in its capacity as the Court-appointed receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc., and  
not in its personal capacity or in any other capacity

(in such capacity, the "Receiver")

- and -

**AMERICAN IRON & METAL COMPANY INC.**

(the "Purchaser")

## RECITALS:

A. Pursuant to an agreement of purchase and sale dated June 5, 2018, between the Receiver and the Purchaser (the "**Purchase Agreement**"), the Receiver agreed to sell, transfer, assign, set over and convey the Purchased Assets to the Purchaser, subject to the terms and conditions set out in the Purchase Agreement.

B. The Receiver and the Purchaser have agreed to amend the Purchase Agreement as provided for in this Agreement.

**FOR VALUE RECEIVED**, the parties agree as follows:

### 1. Definitions

Capitalized terms used in this Agreement but not defined in this Agreement shall have the respective meanings given to them in the Purchase Agreement.

### 2. Amendments to Purchase Agreement

The Receiver and the Purchaser agree to amend the Purchase Agreement by adding the following text at the end of the definition of "Closing Date" under Section 1.1 of the Purchase Agreement:

"or such other date as agreed to in writing by the Receiver and the Purchaser, provided, however, that the "Closing Date" shall not occur any later than September 10, 2018 without approval of the Court;"

3. **Further Confirmations**

The parties further confirm that all other terms of the Purchase Agreement remain the same and that time shall remain of the essence. This Agreement and the Purchase Agreement shall hereafter be read together and shall collectively constitute one agreement.

4. **Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

5. **Successors and Assigns**

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the parties hereto.

6. **Counterparts**

This Agreement may be executed in separate counterparts, which counterparts, when executed by all parties and delivered to all parties, shall be deemed to be a single agreement. This Agreement may be executed and transmitted by facsimile transmission or scanned email and receipt by facsimile transmission or scanned email of a copy of this Agreement executed by a party will bind the party sending the facsimile transmission or scanned email.

**[Remainder of Page Blank, Signatures Follow]**

- 3 -

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above-mentioned.

**A. FARBER & PARTNERS INC.**, solely in its capacity as the Court-appointed receiver of Waxman Realty Company Inc. and 1340923 Ontario Inc., and not in its personal capacity or in any other capacity

Per: 

Name: PAUL DENTON

Title: MANAGING DIRECTOR

I have authority to bind the Corporation.

**AMERICAN IRON & METAL COMPANY INC.**

Per: 

Name: HERBERT BLACK

Title: President

I have authority to bind the Corporation.

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# APPENDIX H

## TIME SENSITIVE OPPORTUNITY

### INVITATION FOR OFFERS

**4350 Harvester Road, Burlington, Ontario (the "Burlington Property")**  
**143 Adams Boulevard, Brantford, Ontario (the "Brantford Property")**

A. Farber & Partners Inc., in its capacity as court-appointed receiver (the "**Receiver**") over the property, assets and undertakings of 1340923 Ontario Inc. ("**134**") and Waxman Realty Company Inc. ("**WRCI**" and, together with 134, the "**Debtors**"), is offering for sale the Debtors' fifty percent (50%) registered interest in in each of the Burlington Property and the Brantford Property (the "**Real Property Interests**") under a sale process (the "**Sale Process**") that the Ontario Superior Court of Justice (Commercial List) (the "**Court**") approved on June 5, 2018 (the "**Sale Process Order**"). The Sale Process Order includes a Court-approved stalking horse bid with a total value of \$6,650,000 (the "**Stalking Horse Bid**"). The Receiver will accept and present the Winning Bid (as defined in the Sale Process) for approval by the Court.

The Receiver invites offers for the Real Property Interests substantially in the form of, and for at least \$175,000 more than, the Stalking Horse Bid.

#### ***Burlington Property***

The Burlington Property is 9.8 acres of land with an industrial building that occupies +/- 96,302 sq. ft. of the lot located on Harvester Road to the southwest of Appleby Line. WRCI and American Iron and Metal Company Inc. ("**AIM**") are registered on title to the Burlington Property as tenants in common with each of them holding a fifty percent (50%) undivided registered interest.

The Burlington Property is leased by WRCI and AIM to a wholly owned subsidiary of AIM that operates in the scrap metal storage, processing and transportation business. The building on the Burlington Property is a single-tenant building that was constructed in 1986, with a remaining lease term of approximately 2 years. The current tenant has the option to renew the lease for a further two terms of 5 years each.

The Burlington Property is located in the Burlington Q.E.W. East Business Park area. The primary land use in this area is industrial. The Burlington Property is close in proximity to Highway 403 (1.3 km away), Appleby GO Station (1.2 km away) and Burlington Transit bus stops.

#### ***Brantford Property***

The Brantford Property is 5.16 acres of land with an industrial building that occupies +/- 39,655 sq. ft. of the lot located on the northwest corner of Adams Boulevard and Middleton Street. 134 and American Iron & Metal

GP Inc. ("AIM GP") are registered on title to the Brantford Property as tenants in common with each of them holding a fifty percent (50%) undivided registered interest.

The Brantford Property is also leased by 134 and AIM GP to a wholly owned subsidiary of AIM that operates in the scrap metal storage, processing and transportation business. The building on the Brantford Property is a single-tenant building, with remaining lease term of approximately 2 years. The current tenant has the option to renew the lease for a further two terms of 5 years each.

The Brantford Property is located in the Braneida Industrial Park area. The primary land use in this area is industrial. The Brantford Property is close in proximity to Highway 403 (2.5 km away), VIA Rail at Brantford train station (4.5 km away) and Brantford Transit bus stops.

## ***Other Considerations***

Offers for the Real Property Interests should be considered to include the Debtors' interest and obligations in the above-noted leases, as the Receiver will not have the authority to terminate the leases at issue.

## ***Sale Process***

The Receiver is authorized to conduct the Sale Process for the Real Property Interests as a stalking horse sale process. A copy of the June 5, 2018 Sale Process Order, including the Sale Process timeline and the Stalking Horse Bid, is available at <https://farbergroup.com/engagements/waxman-realty>.

**The deadline for submission of offers, including the required ten percent (10%) deposit, is 4:00 p.m. (Toronto time) on Tuesday, July 10, 2018. Offers should be made to:**

A. Farber & Partners Inc.  
150 York Street, Suite 1600,  
Toronto, Ontario, M5H 3S5  
Attention: Noah Litwack and Paul J. Denton

## ***Data Room and Confidentiality Agreement***

Prospective purchasers can access an electronic data room to view available information (due diligence materials) which the Receiver will provide upon receipt of an executed confidentiality agreement, a copy of which is attached for your reference.

***For further information, please contact:***

**Noah Litwack, CIRP, LIT**

<b>Title</b>	Manager   Restructuring
<b>Telephone</b>	+1 (416) 496-3719
<b>Email</b>	<a href="mailto:nlitwack@farbergroup.com">nlitwack@farbergroup.com</a>







**FARBER**

150 York Street, Suite 1600  
Toronto, ON, Canada, M5H 3S5  
T: 1.855.775.8777  
F: 416.496.3839

June 5, 2018

To: Prospective Purchasers

Dear Sir/Madam:

**Re: Waxman Realty Company Inc. ("WRCI") and 1340923 Ontario Inc. ("134" and, together with WRCI, the "Companies")**

In connection with your possible interest in exploring an acquisition of assets, undertakings and properties of the Companies (a "**Transaction**"), you have requested certain information from A. Farber & Partners Inc., in its capacity as court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of the Companies pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made June 5, 2018 (the "**Appointment Order**"), and from the officers, directors, shareholders, employees, representatives, solicitors, advisors and/or agents of the Receiver and/or Companies, as applicable (collectively, and together with the Receiver, the "**Information Parties**"). All such information furnished to you or your Representatives (as defined below) by or on behalf of the Information Parties (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents prepared by you or your Representatives containing or based in whole or in part on any such furnished information are collectively referred to herein as the "**Information**". Information about identifiable individuals is referred to as "**Personal Information**".

In consideration of furnishing you with the Information, the Information Parties request your agreement to, and you agree to and will cause your Representatives to comply with, the following:

1. The Information will be used solely for the purpose of evaluating a Transaction, and the Information will be kept strictly confidential and will not be disclosed by you or your Representatives, except that you may disclose the Information or portions thereof to those of your directors, officers, shareholders and employees and representatives of your legal, accounting and financial advisors (the persons to whom such disclosure is permissible being collectively referred to herein as the "**Representatives**") who need to know such information for the purpose of evaluating such Transaction; provided that such Representatives are informed of the confidential and proprietary nature of the Information and agree in advance in writing to comply with the terms of this letter (this "**Agreement**"). Without in any way limiting the generality of the foregoing, you and your Representatives shall store the Information properly and securely and ensure that appropriate physical, technological and organizational measures are in place to protect the Information against unauthorized or unintended access, use or disclosure. Notwithstanding anything to the contrary contained in this Agreement, the following additional restrictions shall apply to Personal Information: (a) neither you nor your Representatives shall retain, for any longer than necessary,

any records pertaining to Personal Information; and (b) the confidentiality and non-use obligations in this Agreement pertaining to Personal Information shall survive any termination or expiration of this Agreement. You agree to be responsible for any breach of this Agreement by your Representatives (it being understood that such responsibility shall be in addition to, and not by way of limitation of, any right or remedy the Information Parties may have against such Representatives with respect to any such breach).

2. Except with the prior written consent of the Receiver, neither you nor your Representatives will disclose to any person either the fact that any investigations, discussions or negotiations are taking place concerning a Transaction, or that you have received Information from any of the Information Parties, or any of the terms, conditions or other facts with respect to any such possible Transaction or involvement, including the status thereof. The term "person" as used in this Agreement will be interpreted broadly to include the media and any corporation, company, group, partnership, limited liability company, trust or other entity or individual.
3. If you or any of your Representatives become legally compelled (including by deposition, discovery, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you shall provide the Receiver with prompt prior written notice of such requirement so that the Receiver and/or another of the Information Parties may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, both you and your Representatives shall disclose only that portion of the Information which is legally required to be disclosed and shall take all reasonable steps to attempt to preserve the confidentiality of the Information.
4. Other than with regard to "Personal Information", the term "Information" does not include any information which: (i) at the time of disclosure is generally available to the public (other than as a result of a disclosure directly or indirectly by you or your Representatives or by a person that you or your Representatives know, knew or ought to have known had disclosed such information in breach of a confidentiality obligation owed to the Information Parties); or (ii) was available to you on a non-confidential basis from a source other than any of the Information Parties, provided that such source is not and was not known by you or your Representatives, or ought not to have been known by you or your Representatives, to be bound by a confidentiality obligation owed to any of the Information Parties.
5. If you determine not to pursue a Transaction, you will promptly notify the Receiver of your determination. At the time of such notice, or if, at any earlier time, the Receiver so directs (whether or not you determine to pursue a Transaction), you and your Representatives will promptly return to the Receiver or destroy (at the Receiver's election, notwithstanding the source of the Information), all the Information and all copies, extracts or other reproductions in whole or in part thereof. Notwithstanding the return or destruction of the Information, as applicable, you and your Representatives will continue to be bound by this Agreement.

6. You understand and acknowledge that none of the Information Parties is making any representation or warranty, express or implied, as to the accuracy or completeness of the Information, and none of the Information Parties will have any liability to you or any other person resulting from your use of the Information. Only those representations or warranties that are made to you in a definitive and executed written agreement regarding a Transaction (a “**Definitive Agreement**”) will have any legal effect, subject to such limitations and restrictions as may be specified in such Definitive Agreement. For greater certainty, the term “Definitive Agreement” does not include an executed letter of intent or any other preliminary written agreement nor does it include any written or oral acceptance by the Receiver of any offer or bid, if any, made by you or your Representative.
7. Unless and until a Definitive Agreement with respect to a Transaction has been fully-executed and delivered, the Receiver has no legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement or any other written or oral expression with respect to a Transaction except, in the case of this Agreement, for the matters specifically agreed to herein. You acknowledge that a sale process has been approved by the Court (the “**Sale Process**”), that the Receiver may seek the Court’s approval to amend the Sale Process and that amendments to the Sale Process may be sought without notice to you. The Receiver reserves the right to cease or amend the offering under the Sale Process at any time and/or to reject any or all offers received thereunder, subject to the Court’s approval. Subject to the terms of the Sale Process, the Receiver shall be free to provide Information to any person as the Receiver in its sole discretion shall determine.
8. You agree that monetary damages would not be a sufficient remedy for any breach of this Agreement by you or your Representatives and that the Information Parties shall be entitled to, and neither you nor your Representatives shall oppose the granting of, equitable relief, including, without limitation, an injunction and specific performance, in the event of any such breach, in addition to all other remedies available to the Information Parties at law or in equity or otherwise. You further agree to indemnify the Information Parties for any costs and expenses, including, without limitation, legal costs which such parties may incur in connection with the enforcement of this Agreement.
9. You agree that no failure or delay by the Information Parties in exercising any right, power or privilege hereunder will operate as a waiver thereof or an estoppel thereto, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
10. If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

11. All contacts by you or your Representatives with the Information Parties regarding the Information, a Transaction or otherwise shall be made through representatives of the Receiver or such other person as you are notified by the Receiver, in writing, to contact.
12. Any requirement for you to provide notice or other communication shall be in writing and may be delivered personally or transmitted by fax or email, addressed as follows:  
  
A. Farber & Partners Inc.  
150 York Street  
Toronto, ON M5H 3S5  
Attention: Paul J. Denton  
Fax: 416-496-3839  
Email: [pdenton@farberfinancial.com](mailto:pdenton@farberfinancial.com)
13. You acknowledge that Court approval of any Transaction is required.
14. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to the conflicts of law principles thereof. You further agree to attorn to the exclusive jurisdiction of the Court in regards to any matter that may arise in connection with this Agreement.
15. This Agreement may be executed in counterparts and transmitted by facsimile or other form of electronic transmission, each of which when so executed shall constitute an original and all of which shall together constitute one and the same Agreement.
16. If you agree with the foregoing, please sign and return a copy of this Agreement, which will constitute our agreement with respect to the subject matter hereof.

Yours very truly,

**A. Farber & Partners Inc., solely in its capacity  
as Court-appointed Receiver of Waxman Realty  
Company Inc. and 1340923 Ontario Inc. and  
not in its personal or corporate capacity**

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Per: Paul J. Denton, CA(NZ), CIRP, LIT  
Managing Director

# FARBER

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## CONFIRMED AND AGREED

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Company

---

Name (please print)

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Signature

---

Email address (to receive confidential information)

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Date

32796649.2



# APPENDIX I

District of	ONTARIO
Estate No.	32-159037
Estate No.	32-159038
Court File No.	CV-18-595577-00CL

IN THE MATTER OF THE RECEIVERSHIP OF THE PROPERTY OF  
WAXMAN REALTY COMPANY INC.  
AND  
IN THE MATTER OF THE RECEIVERSHIP OF THE PROPERTY OF  
1340923 ONTARIO INC.

RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

	<u>Notes</u>		
<b>Receipts</b>			
Advance from secured creditor	1	\$	26,000.00
Advance from receiver			70.00
<b>Total Receipts</b>		<b>\$</b>	<b>26,070.00</b>
<b>Disbursements</b>			
Filing Fees paid to Official Receiver			140.00
HST on administrative disbursement			2,977.26
Advertising			3,212.00
Appraisal fees			19,690.00
Bank charges			30.30
<b>Total Disbursements</b>		<b>\$</b>	<b>26,049.56</b>
<b>Balance</b>		<b>\$</b>	<b>20.44</b>

Notes:

- 1 The advance from secured creditor is secured by the Receiver's Borrowing Charge and accrues interest at a rate equal to the commercial prime lending rate of the Bank of Nova Scotia plus 1%, compounded monthly and in arrears. Effective July 31, 2018, no accrued interest has been included above.

Date: July 31, 2018

A. FARBER & PARTNERS INC. - Receiver



# APPENDIX J



Estate No. 32-159037  
Estate No. 32-159038  
Court File No. CV-18-595577-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**BETWEEN:**

**AMERICAN IRON & METAL COMPANY INC.**

**Applicant**

**AND**

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

**Respondents**

**AFFIDAVIT OF PAUL J. DENTON**

I, Paul J. Denton, of the Town of Aurora, in the Province of Ontario, MAKE OATH AND STATE AS FOLLOWS:


1. I am a Licensed Insolvency Trustee and managing director at A. Farber & Partners Inc. ("Farber") and, as such, have knowledge of the matters to which I hereinafter depose.
2. Farber was appointed Receiver (the "Receiver"), without security, over the assets, undertakings and properties of 1340923 Ontario Inc. and Waxman Realty Company Inc. pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made on June 5, 2018.

3. The Receiver has rendered one invoice in this matter, being an invoice for the period to July 31, 2018 in the total amount of \$108,790.00 plus HST and disbursements. A summary of time is attached herewith as Exhibit 1. A copy of the one invoice rendered to date is attached as Exhibit 2.

4. The total of the Receiver's fees as outlined in Appendix 1 is \$108,790.00 together with disbursements of \$1,591.04 and HST of \$14,142.70, the sum of which equals \$124,523.74. The average hourly rate in respect of time as outlined in Appendix 1 is \$488.72.

5. This Affidavit is made in support of a motion to, *inter alia*, seek approval of the foregoing fees and disbursements as fair and reasonable.

SWORN BEFORE ME at the  
City of Toronto, in the  
Province of Ontario,  
this 2<sup>nd</sup> day of August, 2018

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
Paul J. Denton, CA (NZ), CIRP, LIT

**ROBYN JANE WHITE, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: August 11, 2020.**

**EXHIBIT 1**

**THIS IS EXHIBIT "1" TO  
THE AFFIDAVIT OF PAUL J. DENTON  
SWORN BEFORE ME THIS 2<sup>nd</sup>  
DAY OF AUGUST, 2018**

*B. White*  
**A Commissioner Etc.**

**ROBYN JANE WHITE, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: August 11, 2020.**

## A. FARBER &amp; PARTNERS INC.

## WAXMAN REALTY CORP.

SUMMARY OF TIME INCURRED  
JANUARY 5, 2018 TO JULY 31, 2018

Name	Total Hours	Rate Per Hour	Billing
H. Levy	26.90	\$595.00	\$16,005.50
*H. Levy	12.00	\$575.00	\$6,900.00
P. Denton	85.20	\$550.00	\$46,860.00
*P. Denton	4.00	\$525.00	\$2,100.00
N. Litwack	80.30	\$425.00	\$34,127.50
A. Binelli	3.10	\$200.00	\$620.00
A. Chopowick	1.60	\$200.00	\$320.00
I. Lloyd-Key	0.20	\$200.00	\$40.00
L. Samoilov	5.30	\$200.00	\$1,060.00
G. Schmidt	2.60	\$200.00	\$520.00
D. Da Silva-Falcione	0.40	\$155.00	\$62.00
M. Castillo	1.00	\$175.00	\$175.00
<b>Total</b>	<b>222.60</b>		<b>\$108,790.00</b>

\*NOTE: March 1st, 2018 - some rates changed

*The average hourly rate: \$488.72*

**EXHIBIT 2**

**THIS IS EXHIBIT "2" TO  
THE AFFIDAVIT OF PAUL J. DENTON  
SWORN BEFORE ME THIS 1<sup>ST</sup>  
DAY OF AUGUST, 2018**

  
\_\_\_\_\_  
**A Commissioner Etc.**

**ROBYN JANE WHITE, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: August 11, 2020.**

**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

August 2, 2018

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 14758

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**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of January 5, 2018 to July 31, 2018:**

DATE	SERVICE	STAFF
01/05/2018	Consulting fees - Corporate Calls and review of emails from Stephen Brown-Okruhlik regarding property valuation information	Levy
01/09/2018	Consulting fees - Corporate Follow up call with Phil Smith regarding appraisal	Levy
01/10/2018	Consulting fees - Corporate Emails with Stephen Brown-Okruhlik	Levy
01/16/2018	Consulting fees - Corporate Numerous calls with Altus regarding the appraisal information; Discussions with Stephen Brown-Okruhlik; Calls and emails with Kamila Wirpszo regarding appraisal approval and costs	Levy
01/17/2018	Consulting fees - Corporate Review of Waxman materials including forbearance agreement, security opinion and draft form of stalking horse APS	Denton
01/17/2018	Consulting fees - Corporate Emails with Paul Bender and Ken Robson regarding site visits by Altus	Levy
01/17/2018	Accounting Account Setup	Castillo
01/18/2018	Consulting fees - Corporate Further review of Waxman materials including Altus appraisal engagement letter	Denton

# FARBER

01/18/2018	Consulting fees - Corporate	Levy
	Emails with Paul Bender and Ken Robson	
01/24/2018	Consulting fees - Corporate	Levy
	Emails and call with Paul Bender; Email to Stephen Brown-Okruhlik regarding request	
01/26/2018	Consulting fees - Corporate	Levy
	Review of the draft Agreement of Purchase and Sale and email correspondence with Steve Graff	
02/02/2018	Consulting fees - Corporate	Denton
	Review of Altus e-mail; review of stalking horse APA draft	
02/07/2018	Consulting fees - Corporate	Levy
	Emails and calls with Steve Graff, Stephen Brown-Ohkrulik	
02/13/2018	Consulting fees - Corporate	Levy
	Emails and discussions with Steve Graff, Wael Rostom regarding Altus appraisals	
02/14/2018	Consulting fees - Personal	Denton
	Work on draft report outline; turn draft with DF; review of e-mails; review of stalking horse APA	
02/14/2018	Consulting fees - Corporate	Da Silva-Falcione
	Updates to first draft of Proposed Receiver's report.	
02/16/2018	Consulting fees - Corporate	Levy
	Emails and calls with Paul Bender regarding appraisals	
02/20/2018	Consulting fees - Corporate	Levy
	Various emails with Wael Rostom, Stephen Graff regarding moving forward with sales process	
02/21/2018	Consulting fees - Corporate	Levy
	Conference call with Wael Rostom, Stephen Brown-Ohkrulik, Steve Graff and Jeremy Nemers; Follow up discussion with Steve Graff regarding hearing on the 26th	
04/03/2018	Consulting fees - Corporate	Denton
	Review of the updated form of APS and markup; review of final appraisals as provided by Altus for each of the properties; commence mapping out the stalking horse sales process	
04/04/2018	Consulting fees - Corporate	Levy
	Emails with Wael Rostom and Steve Graff; Call with Steve Graff; Discussions with Paul Denton regarding stalking horse bid	

04/05/2018	Consulting fees - Corporate	Denton
	Update draft proposed receiver report; review of Altus appraisals; review and consider Stalking Horse Sales process; work on sales process timetable; review with HL; send over to Aird Berlis	
04/06/2018	Consulting fees - Corporate	Denton
	Review of draft motion record; update and turn draft report; review of matters with HL; call with S Graff; review of S Graff mark up of documents; review of e-mail over the weekend	
04/08/2018	Consulting fees - Corporate	Levy
	Conference call with Stephen Brown-Okruhlik and Steve Graf	
04/09/2018	Consulting fees - Corporate	Denton
	Call with legal counsel on draft court materials; call with McMillan and legal counsels; participate on conference call late evening to review certain conditions of the bid, contingent claims and potential constructive trust claim; turn draft report and sales process documents	
04/09/2018	Consulting fees - Corporate	Chopowick
	Waxman - edits to report for P Denton	
04/09/2018	Consulting fees - Corporate	Litwack
	Reviewed memorandum setting out background and process on receivership appointment; reviewed draft motion record and draft proposed receiver report; discussions with P Denton regarding same.	
04/09/2018	Consulting fees - Corporate	Levy
	Review of Draft Order, NOM and Sales Process timeline documents; Discussions with Paul Denton	
04/10/2018	Consulting fees - Corporate	Denton
	Call with Aird Berlis on court materials and approach to finalizing materials and discussion points with McMillan (AIM); review of draft stalking horse APS; receivership order, sales process order, affidavit; call with AB to review and provide comments; review of e-mails; review of AIM FS on confidential basis; review of e-mails in the evening	
04/10/2018	Consulting fees - Corporate	Levy
	Numerous calls and emails with Paul Denton, Jeremy Nemers and Steve Graff; Review of documentation and regarding receivership engagement process	
04/11/2018	Consulting fees - Corporate	Denton
	Attend to web link for court report; review of final	



# FARBER

documents for motion service; liaise with Aird Berlis on various matters; send receiver consent to McMillan; follow up Waxman financial statements

- |            |   |
|------------|---|
| 04/11/2018 | <p>Consulting fees - Corporate Litwack</p> <p>Assisted with putting together draft confidentiality agreement; drafted language for liability rider; put together list and documents for including in electronic data room; started working on draft Confidential Information Memorandum ("CIM").</p>  |
| 04/12/2018 | <p>Consulting fees - Corporate Denton</p> <p>Follow up motion record; review and advance draft receiver report; provide report to Aird Berlis; brief Noah on the sales process; review of the final sales process; brief Noah L on the sales process on work to be completed including an interested party list;</p>  |
| 04/12/2018 | <p>Consulting fees - Corporate Litwack</p> <p>Compiled documents and data for electronic data room; reviewed information and documents available for sale process; continued drafting CIM</p>   |
| 04/12/2018 | <p>Consulting fees - Corporate Levy</p> <p>Calls with Steve Graff, Wael Rostom; review of emails from Jeremy Nemers; Call with Stephen Brown-Ohkrulik; Review of draft Orders and comments thereon</p>  |
| 04/13/2018 | <p>Consulting fees - Corporate Denton</p> <p>Follow up Waxman financial statements with Waxman legal counsel; review of updated motion record served and review with NL; review of sales process documents and pricing issues with NL; review revised receiver report over weekend; liaise with NL over weekend on teaser and sales process</p>   |
| 04/13/2018 | <p>Consulting fees - Corporate Litwack</p> <p>Staff direction regarding set up of electronic data room; drafted language for case website; direction to staff regarding posting court documents to case website; continued drafting CIM; drafted teaser document for sale process; drafted language for newspaper advertisement of sale process; various discussions and emails with P Denton regarding sale process and related documents.</p> |
| 04/13/2018 | <p>Consulting fees - Corporate Levy</p> <p>Review of documentation from Jeremy Nemers and Paul Denton</p>   |
| 04/16/2018 | <p>Consulting fees - Corporate Denton</p> <p>Review and attending to turn of report; review of e-mails</p>  |

# FARBER

from Applicant's legal counsel; attend to confidential appendix matter re: appraisals; review of matters with HL and NL

04/16/2018	Consulting fees - Corporate	Chopowick
	Update website wording and post document per N Litwack.	
04/16/2018	Consulting fees - Corporate	Levy
	Various emails with Jeremy Nemers and Stephen Brown-Ohkrulik regarding motion materials; Various discussions with Paul Denton regarding draft report	
04/16/2018	Consulting fees - Corporate	Litwack
	Continued working on drafting teaser and CIM document; discussions with P Denton regarding same.	
04/17/2018	Consulting fees - Corporate	Denton
	Attending to finalization of the proposed receiver report; liaison with Aird Berlis, HL and NL; coordinate matters with Annette C;	
04/17/2018	Consulting fees - Corporate	Levy
	Various emails and review of court documents from Aird & Berlis and McMillan regarding receivership appointment; Review of comments on proposed receiver report	
04/18/2018	Consulting fees - Corporate	Denton
	Review of sales process matters and documents including the teaser, draft CIM and advertisement; meet with NL to review same; review of court materials and factum	
04/18/2018	Consulting fees - Corporate	Litwack
	Emails with J Nemers and S Graff regarding teaser and newspaper advertisement of sale process; discussions with P Denton regarding same.	
04/19/2018	Consulting fees - Corporate	Chopowick
	Upload documents to website and update page wording.	
04/19/2018	Consulting fees - Corporate	Levy
	Call with BDC to discuss concerns; Review of various drafts of the Receivership Order; Various emails and calls with Wael Rostom and Steve Graff; Call with McMillan, Kamila Wirpszo, Steve Graff regarding BDC concerns; Review of responding materials from LOSL	
04/19/2018	Consulting fees - Corporate	Litwack
	Emails for posting information on case website; emails with S Graff regarding sale process documents; revised sale process documents.	

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04/20/2018	Consulting fees - Corporate	Levy
	Attend in Court for proposed receivership application and opposition from NASG; Various discussions with BDC, NASG and McMillans	
05/25/2018	Consulting fees - Corporate	Denton
	Review of court decision	
05/25/2018	Consulting fees - Corporate	Levy
	Review of the endorsement and numerous emails and discussions with Kamila Wirpszo regarding Altus, endorsement	
05/29/2018	Consulting fees - Corporate	Levy
	Call with Wael Rostom, Stephen Brown-Ohkrulik and Steve Graff	
05/30/2018	Consulting fees - Corporate	Denton
	Review of updated draft court orders, sales process, and stalking horse APS review internal status of documents to support sales process; liaise with NL to coordinate planning for update of documents	
05/31/2018	Consulting fees - Corporate	Denton
	Brief follow up meeting with NL on time line for sales process and sales process documents to be updated; review interested party list; provide interest party	
06/01/2018	Consulting fees - Corporate	Denton
	Review of e-mails and status re: reattendance at Court	
06/01/2018	Consulting fees - Corporate	Levy
	Various emails with McMillan and Aird & Berlis regarding updated timelines	
06/04/2018	Consulting fees - Corporate	Denton
	Review requirements for court attendance June 5; liaise with Aird Berlis on same; update sales process timetable, review of matters with NL; review of updated orders	
06/04/2018	Consulting fees - Corporate	Litwack
	Edited sale process timeline and updated all sale process materials in advance of court hearing to be reconvened; various correspondence with P Denton regarding same; drafted updated language for case website; prepared confidentiality agreement.	
06/05/2018	Consulting fees - Corporate	Denton
	Review of draft sales documents including teaser, offer form, web site, advertisement; review of matters with Aird Berlis, NL and HL; liaise with general manager at	

# FARBER

properties K Robson to coordinate site tours; liaise with K Wirpszo in-house counsel at AIM; review and follow up signed Stalking Horse APA

- |            |   |
|------------|---|
| 06/05/2018 | <p>Consulting fees - Corporate Litwack</p> <p>Emails with J Nemers and P Denton regarding agreement of purchase and sale; emails with stalking-horse bidder regarding sale process; various discussions and emails with P Denton regarding data room information and documentation available, as well as population of same; discussions and review regarding court orders issued; initial set up of administrative matters relating to receivership; continued drafting confidential information memorandum ("CIM"); reviewed and revised CIM.</p> |
| 06/05/2018 | <p>Consulting fees - Corporate Levy</p> <p>Numerous emails and discussions with Steve Graff, Paul Denton; review of the documents from Stephen Brown-Ohkrulik Call with Kamila Wirzspo regarding receivership funding</p>   |
| 06/06/2018 | <p>Consulting fees - Corporate Denton</p> <p>draft e-mail and contact Waxman legal counsel M Moloci with information requests; liaise with NL on appointment and sales process matters; follow up payment of deposit; review matters with HL; participate on call with K Wirpszo in-house legal counsel for AIM;</p>  |
| 06/06/2018 | <p>Consulting fees - Corporate Litwack</p> <p>Set up of file for banking and receipt of deposit relating to agreement of purchase and sale; emails regarding update of sale process documents; continued drafting CIM; reviewed various leases and agreements involving the debtors; reviewed other documentation for including in data room; memo to file and P Denton regarding same.</p>   |
| 06/07/2018 | <p>Consulting fees - Corporate Binelli</p> <p>Email correspondence, back and forth, with Globe and Mail to place an ad</p>  |
| 06/07/2018 | <p>Consulting fees - Corporate Denton</p> <p>Review of interested party list; review finalized teaser, advertisement and web site narrative; review of documents for data room; coordinate and have call with Kamila Wirpszo and Ken Robson of AIM on property matters and profile; review of interested party list; review of various matters with NL on the set up and commencement of the sales process; liaise with the AIM VP of Finance late afternoon regarding financial data for two properties;</p>                                       |

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06/07/2018	Consulting fees - Corporate Upload documents to website.	Schmidt
06/07/2018	Consulting fees - Corporate Finalized teaser document; set up of amendments to case website; directions to staff regarding virtual data room set up; email campaign to list of prospective offerors; reviewed protocol for site tours by prospective offerors with staff; direction to staff regarding sale process advertisement in Globe & Mail; directions to staff regarding deposit for agreement of purchase and sale; correspondence with Respondents to email campaign on sale process; reviewed confidentiality agreement received for execution; prepared for site visit.	Litwack
06/08/2018	Consulting fees - Corporate Liaise with the AIM VP of finance to obtain historical financial information on properties, including rental revenue and costs and property P&Ls; review of interested party list; review of matters with NL; work on turning CIM document; complete summary table of property P&Ls; liaise with NL on property tours and CIM; liaise with NL on general matters	Denton
06/08/2018	Consulting fees - Corporate Attended at both Burlington and Brantford premises with S Rabinovitch; met with staff at each location to take pictures and tour sites; travel time; notes regarding staff discussions; approved advertisement in Globe & Mail for sale process; continued working on drafting CIM; reviewed received confidentiality agreement; continued setting up data room.	Litwack
06/11/2018	Consulting fees - Corporate Work on finalizing sales process documents including review of CIM; review of matters with NL; review of data room documents; liaise with AIM in house legal counsel Kamila Wirpszo; liaise with AIM VP of Finance Sylvain Guenette re: recent and historical financial performance as well as chronology of events; review of forbearance agreement and guidelines for fees and costs; review and sign CA of interested party	Denton
06/11/2018	Consulting fees - Corporate Continued drafting CIM; reviewed chronology of events leading up to current status of properties; continued compiling documents for data room; emails with AIM regarding chronology of events, property and lease details, insurance; reviewed and edited CIM with P Denton.	Litwack

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06/11/2018	Consulting fees - Corporate	Levy	Various discussions with Paul Denton regarding sales process, DIP Funding, payment of Altus invoices
06/12/2018	Consulting fees - Corporate	Denton	Review and finalize data room in concert with NL to support sales process; liaise with AIM in-house legal counsel and VP Finance to confirm CIM and sales process financial and other data; coordinate a conference call with in-house legal counsel; review of matters with NL; review sign CA agreement
06/12/2018	Consulting fees - Corporate	Litwack	Supplementary email campaign to prospective offerors; email follow up with prospective offeror; reviewed and revised CIM for final draft; reviewed confidentiality agreement submitted and provided data room access to prospective offeror; call with prospective offeror.
06/13/2018	Consulting fees - Corporate	Denton	review of environmental reports provided re: Burlington property; sign CA agreements; review of s. 245/ 246 report with information availability with NL; follow up information with Scarfone Hawkins; review of data room documents
06/13/2018	Consulting fees - Corporate	Litwack	Responded to requests for information from prospective offerors; reviewed executed confidentiality agreements with P Denton for sign back; coordinated and compiled additional documents for posting to data room; started drafting initial notice and statement of receiver for Waxman Realty Company Inc. and 1340923 Ontario Inc.
06/13/2018	Consulting fees - Corporate	Schmidt	Add documents to data room.
06/14/2018	Consulting fees - Corporate	Denton	Follow up Scarfone Hawkins re: financial statements; review of matters with NL;
06/14/2018	Consulting fees - Corporate	Litwack	Review draft initial notice and statement of receiver with P Denton; correspondence with prospective offeror.
06/15/2018	Consulting fees - Corporate	Denton	Review of section 245/246 reports for each company; follow up financial statement information with Scarfone Hawkin and Aaron Waxman; review of matters throughout the day with NL

# FARBER

06/15/2018	Consulting fees - Corporate	Litwack
	Email follow up with J Nemers regarding service list and status of sale process; correspondence regarding initial notice and statement of receiver; finalized same; coordinated mailing of same; emails with AIM regarding insurance coverage; followed up with receiver's insurer regarding corporate general liability coverage; review agreement of purchase and sale for treatment of deposit; coordinated payment of estate disbursements.	
06/15/2018	Consulting fees - Corporate	Schmidt
	Assist in Notice and Statement of Receiver mailings; Request Ascend license.	
06/18/2018	Consulting fees - Corporate	Denton
	Follow up financial information from Waxman and 134; liaise with A Bleecker of new accounting firm BDFP engaged by Waxman and 134; review sales process status with NL	
06/19/2018	Consulting fees - Corporate	Denton
	Review of financial information and historical tax returns provided by Andrew Bleecker for each of the debtor entities; review of matters with NL; review of financial information to be included in the data room; follow up OSB acknowledged reporting re: 245/246 report	
06/19/2018	Consulting fees - Corporate	Litwack
	Call and subsequent emails with L Zannella of AIM regarding insurance coverage for properties; prepared application with Firstbrook Cassie Anderson (FCA) insurance brokers for receiver's coverage on properties; reviewed critical payment requirements and budget needs.	
06/19/2018	Consulting fees - Corporate	Levy
	Review of emails from Steve Graff, Paul Denton	
06/20/2018	Consulting fees - Corporate	Denton
	Review of sales process with NL; review of NASG claim and defense to same in preparation for call with Aird and Berlis;	
06/20/2018	Consulting fees - Corporate	Litwack
	Reviewed tax returns for both WRCI and 134; drafted reproduction of financial statements from tax returns; reviewed same with P Denton; created PDF files for posting to data room; emails regarding service list and issued 245/246 notices; update discussions with H Levy; continued drafting FCA insurance application; email questions regarding same to K Robson of AIM to confirm.	

06/20/2018	Consulting fees - Corporate	Schmidt	Add documents to data room; Post document to website.
06/21/2018	Consulting fees - Corporate	Litwack	Followed up with FCA regarding insurance application and quote; began drafting and preparing general framework for receiver's report to court.
06/22/2018	Consulting fees - Corporate	Denton	Review of matters with NL; review reporting outline for next court report; follow up property insurance matters
06/22/2018	Consulting fees - Corporate	Litwack	Continued working on draft receiver's report.
06/25/2018	Consulting fees - Corporate	Denton	Assess interim funding needs; review of accounting trust account set up (two entities - 2 sales process); review of matters with NL; review of FCA insurance quote; review next court report outline;
06/25/2018	Consulting fees - Corporate	Litwack	Followed up with FCA regarding insurance quote; call with BDC regarding status of Brantford property; emails with pictures from site visit to Brantford property; discussions with P Denton regarding same.
06/26/2018	Consulting fees - Corporate	Denton	Review of the sales process status; coordinate interim funding needs; liaise with AIM on same (Luciana out of office; review of matters with HL; coordinate banking set up with Lidia S
06/26/2018	Consulting fees - Corporate	Litwack	Call with counsel for NASG Canada regarding sale process; emails regarding same; discussions with counsel regarding same.
06/27/2018	Consulting fees - Corporate	Schmidt	Add user to data room.
06/27/2018	Consulting fees - Corporate	Denton	Participate on conference call with S Graff re: claims process and most efficient path through a claims process including consideration of the merits of the NASG constructive trust claim; review of funding needs including following up with AIM payment of the Altus Group invoice; prepare interim funding request via Receivers certificate; review of funding and insurance needs with Luciana Zannelli; review and amend funding



request and the related Receivers certificate; review of matters with HL and NL; review of NASG request for access to the data room; review sales process generally

- |            |   |
|------------|---|
| 06/27/2018 | Consulting fees - Corporate Litwack<br>Emails with N Holmberg, counsel for NASG Canada, regarding sale process and obtaining access to the data room; discussions with counsel regarding same; reviewed executed confidentiality agreement with P Denton; drafted email response regarding same; provided access to data room; reviewed insurance quote from FCA with P Denton; correspondence with AIM regarding insurance coverage for both properties. |
| 06/27/2018 | Consulting fees - Corporate Levy<br>Call with Steve Graff regarding potential claims adjudication process and go forward plan taking into consideration Waxman and NASG interests; Review of receiver funding requirements  |
| 06/28/2018 | Consulting fees - Corporate Denton<br>Review of Aaron Waxman e-mail; follow up insurance matter with AIM; review of matters with NL   |
| 06/28/2018 | Banking - Corporate Samoilov<br>Waxman - Open a new bank account. Setup the bank account in Ascend. Prepare and forward to CRA authorization letter and request to open HST BN. 1340923 - Open a new bank account. Setup the bank account in Ascend.  |
| 06/29/2018 | Consulting fees - Corporate Denton<br>Review of the status of the sales process with NL; revisit BDC debt level per A Waxman e-mail;  |
| 06/29/2018 | Consulting fees - Corporate Litwack<br>Email correspondence with BDC regarding loan agreement; reviewed same.   |
| 07/02/2018 | Consulting fees - Corporate Levy<br>Review of emails between Aird & Berlis and Farber; Follow up discussions with Paul Denton   |
| 07/03/2018 | Consulting fees - Corporate Denton<br>Review of e-mails; respond to queries from BDFP re: retention; review of matters with NL  |
| 07/03/2018 | Consulting fees - Corporate Litwack<br>Reviewed joint venture agreements for treatment of debts; emails regarding debtor's question about notice and statement of receiver; reviewed BDC loan agreement.  |

- 07/04/2018 Consulting fees - Corporate Denton  
Review of matters with HL and NL; coordinate call with AB to discuss A Waxman e-mail re reimbursement of legal fees paid, the BDC debt for 134, dealing with NASG claim, need for pro forma calculation; coordinate response to A Waxman re: reimbursement for legal fees paid
- 07/04/2018 Consulting fees - Corporate Litwack  
Conference call with legal counsel regarding administrative update, tax issues, review of secured claims, distribution issues, sale process update, etc.; memo to file regarding call issues.
- 07/05/2018 Consulting fees - Corporate Denton  
Work on high level proforma for estimated recoveries; liaise with BDFP re: financial statement catch-up and tax filing status; draft and send e-mails to A Waxman re: legal fees recovery and BDC debt; prep for and call with A Waxman;
- 07/05/2018 Consulting fees - Corporate Levy  
Review of emails throughout the week from Aaron Waxman, Paul Denton, Jeremy Nemers and Steve Graff
- 07/05/2018 Consulting fees - Corporate Litwack  
Reviewed debtor JV agreements and debentures; reviewed AIM mortgage letter agreements; reviewed BDC letter agreement; prepared schedule and Excel model for draft figures relating to calculating purchase price and cash requirement for same; memo to Paul regarding same.
- 07/06/2018 Consulting fees - Corporate Denton  
liaison with BDFP and access to documents site; review and sign engagement letters for each of the entities WRCl and 134; review of pro-forma - estimated flow of funds from stalking horse; review with NL; draft e-mail and present pro forma to Aird Berlis (SG and JN);
- 07/06/2018 Consulting fees - Corporate Litwack  
Reviewed records and file; updated purchase price calculation schedule; discussions with P Denton regarding same; updated chronology tab of model.
- 07/09/2018 Consulting fees - Corporate Denton  
Review of matters with NL re: sales process; review of e-mail exchanges between BDFP and coordinate call with accountants for later in the week; review of statement of adjustments

# FARBER

07/09/2018	Consulting fees - Corporate Addressed queries regarding funding and payment of outstanding invoices; updated schedule for allocation of sale proceeds; discussions and review with P Denton regarding same.	Litwack
07/09/2018	Banking - Corporate Banking, posting.	Samoilov
07/10/2018	Consulting fees - Corporate Review of e-mails from NL re: CRA claims; participate on calls with legal counsels re next steps and timing; review of the sales process given bid deadline; review of McMillan e-mail re: BDC	Denton
07/10/2018	Consulting fees - Corporate Discussions with P Denton regarding treatment of sale proceeds; updated draft schedule regarding same; email memo to P Denton regarding sale process results; call with CRA regarding tax liens and outstanding returns and remittances of debtors; email memo to team regarding same.	Litwack
07/10/2018	Consulting fees - Corporate Calls with Wael Rostom, Paul Denton, Aird & Berlis regarding updated court time and sales process updates	Levy
07/10/2018	Banking - Corporate Banking, posting.	Samoilov
07/11/2018	Consulting fees - Corporate Deal with receipt of the interim financing of \$26,000 under the Receiver's Certificate; review of matters with NL; review of CRA claims notified July 10 including new claims on 134 for HST and corporate taxes	Denton
07/11/2018	Consulting fees - Corporate Reviewed fax correspondence from CRA regarding secured and unsecured claim; discussions with P Denton regarding same; updated schedule regarding calculation of deposit interest and interest on receiver's borrowings.	Litwack
07/11/2018	Banking - Corporate Banking, posting.	Samoilov
07/12/2018	Consulting fees - Corporate Prepare Affidavits of Mailing	Binelli
07/12/2018	Consulting fees - Corporate Review of draft court report and provide comments to NL; Have call with accountants BDFP regarding	Denton

# FARBER

financial statement status and matters related to the CRA (HST and corporate tax debts owing and returns not filed); *liaise with legal counsel*;

07/12/2018	Consulting fees - Corporate Drafted and completed first draft of receiver's first report to court; correspondence with P Denton regarding same.	Litwack
07/12/2018	Banking - Corporate Banking, posting.	Samoilov
07/13/2018	Consulting fees - Corporate Document preparation	Binelli
07/13/2018	Consulting fees - Corporate Reviewed and revised draft receiver report to court; discussions with P Denton regarding same; reviewed draft statement of receipts and disbursements and provided suggested revisions to format of same.	Litwack
07/13/2018	Banking - Corporate Prepare statement of R&D.	Samoilov
07/16/2018	Consulting fees - Corporate Review of emails from Wael Rostom, Paul Denton and Aird & Berlis	Levy
07/16/2018	Consulting fees - Corporate Work on report draft; review of receipts & disbursement and funds; send draft report to legal counsel Arid Berlis for review	Denton
07/16/2018	Banking - Corporate Banking, posting.	Samoilov
07/17/2018	Consulting fees - Corporate Document preparation	Binelli
07/17/2018	Banking - Corporate Banking, posting.	Samoilov
07/18/2018	Consulting fees - Corporate Follow up accounting matters; review of e-mails between BDFP and AIM; review of CRA correspondence; call with Vernon Pinto of BDFP re various accounting matters and CRA assessment claims re various unconditional offers and CRA settlement claims; review and respond to Waxman legal counsel (M Moloci) regarding treatment of legal fees incurred related to forbearance and stalking horse	Denton

# FARBER

07/19/2018	Consulting fees - Corporate Liaise with Aird Berlis on BDC debt; provide copy of BDC debt for review of security	Denton
07/19/2018	Consulting fees - Corporate Review of various emails regarding BDC indebtedness and sales process update	Levy
07/19/2018	Banking - Corporate Banking, posting.	Samoilov
07/20/2018	Banking - Corporate Bank reconciliation for June 2018.	Lloyd-Key
07/23/2018	Consulting fees - Corporate Follow up discussion with P Denton; prepared draft affidavit of fees.	Litwack
07/23/2018	Consulting fees - Corporate Review of draft affidavit in support of next report and court motion; review of e-mail correspondence between BDFP and AIM	Denton
07/25/2018	Consulting fees - Corporate Call with Vern Pinto and his tax guy Michael re: findings and request for information; review and provide information to BDFP (historical tax returns); von Styp follow up report status with Aird Berlis	Denton
07/26/2018	Consulting fees - Corporate Document production	Binelli
07/26/2018	Consulting fees - Corporate Review of matters with NL; follow up report status and review of e-mails from legal counsel and McMillan regarding timing and service; review of fee affidavit; finalize invoice; review of e-mails from AIM and BDFP re: accounting catch up and HST filing status and responsibility	Denton
07/27/2018	Consulting fees - Corporate Call and emails with BDC regarding payout of BDC charge; call with P Denton regarding draft report to court; reviewed draft report to court and draft orders; email memo regarding revisions to same.	Litwack
07/27/2018	Consulting fees - Corporate Review and work on draft report as provided by AB; call with NL on same	Denton

# FARBER

07/30/2018 Consulting fees - Corporate Denton  
Review NL report comments following call/ review July 27; review of draft BDC e-mail confirming loan balance; update report and provide track change copy to Aird Berlis; have call with JN of Aird Berlis to review changes; follow-up updated affidavit and R&D schedule

07/30/2018 Consulting fees - Corporate Litwack  
Call with P Denton and J Nemers to review and finalize draft report to court.

	Total for Services	\$ 108,790.00
Expenses: Photocopies, faxes, travel etc.	Total for Expenses	<u>1,591.04</u>
	Subtotal	110,381.04
	HST	<u>14,142.70</u>
	Current Amount Due	<u>\$ 124,523.74</u>

HST#136800752RT0001

A. FARBER &amp; PARTNERS INC.

WAXMAN REALTY CORP.

## SUMMARY OF TIME INCURRED JANUARY 5, 2018 TO JULY 31, 2018

Name	Total Hours	Rate Per Hour	Billing
H. Levy	26.90	\$595.00	\$16,005.50
*H. Levy	12.00	\$575.00	\$6,900.00
P. Denton	85.20	\$550.00	\$46,860.00
*P. Denton	4.00	\$525.00	\$2,100.00
N. Litwack	80.30	\$425.00	\$34,127.50
A. Binelli	3.10	\$200.00	\$620.00
A. Chopowick	1.60	\$200.00	\$320.00
I. Lloyd-Key	0.20	\$200.00	\$40.00
L. Samoilov	5.30	\$200.00	\$1,060.00
G. Schmidt	2.60	\$200.00	\$520.00
D. Da Silva-Falcione	0.40	\$155.00	\$62.00
M. Castillo	1.00	\$175.00	\$175.00
<b>Total</b>	<b>222.60</b>		<b>\$108,790.00</b>

\*NOTE: March 1st, 2018 - some rates changed



# APPENDIX K

Court File No. CV-18-595577-00CL

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

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

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

**AFFIDAVIT OF JEREMY THEODORE NEMERS  
(sworn August 1, 2018)**

I, **JEREMY THEODORE NEMERS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for A. Farber & Partners Inc., in its capacity as the court-appointed receiver of 1340923 Ontario Inc. and Waxman Realty Company Inc. (in such capacity, the “**Receiver**”).
2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Receiver, detailing its services rendered and disbursements incurred, namely:




- (a) an account dated February 28, 2018 in the amount of \$14,274.96 in respect of the period from December 15, 2017 to February 23, 2018;
- (b) an account dated May 16, 2018 in the amount of \$26,530.07 in respect of the period from February 26, 2018 to April 30, 2018;
- (c) an account dated July 27, 2018 in the amount of \$14,441.97 in respect of the period from May 25, 2018 to July 23, 2018; and
- (d) an account dated July 31, 2018 in the amount of \$2,658.00 in respect of the period from July 23, 2018 to July 31, 2018,

(the “**Statements of Account**”). Attached hereto and marked as **Exhibit “A”** to this Affidavit are copies of the Statements of Account. The average hourly rate of Aird & Berlis LLP is \$508.28.

- 3. Attached hereto and marked as **Exhibit “B”** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.
- 4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

**SWORN** before me at the City of )  
 Toronto, in the Province of Ontario )  
 this 1<sup>st</sup> day of August, 2018 )

  
 \_\_\_\_\_  
 A commissioner, etc. )

  
 \_\_\_\_\_  
**JEREMY THEODORE NEMERS**

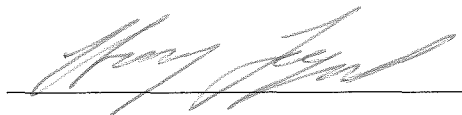
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF JEREMY THEODORE NEMERS

Sworn before me

this 1st day of August, 2018

A handwritten signature in cursive script, appearing to read "Harry J. Ford", is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

**AIRD BERLIS**

275

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

A. Farber & Partners Inc.  
1600 - 150 York Street  
Toronto, ON  
M5H 3S5

Attention: Mr. Hylton Levy

**Account No.: 591529**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

February 28, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended February 23, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	15/12/17	\$775.00	0.10	\$77.50	Emails with W. Rostom and H Levy
SLG	19/12/17	\$775.00	0.60	\$465.00	Review steps memo; discussion with W. Rostom, H. Levy and S. Brown re issues, high level course of action and next steps
TSJ	19/12/17	\$295.00	0.30	\$88.50	Attend telephone call with client team and McMillan; Follow-up discussion with S. Graff
SLG	20/12/17	\$775.00	1.00	\$775.00	Lengthy update call with H. Levy, S. Brown-Okruhlik and W. Rostom re memo and approach and next steps
TSJ	20/12/17	\$295.00	0.60	\$177.00	Receive and review real estate security; Follow-up order regarding parcel instruments; Receive and review same; Review forbearance agreement
CP	20/12/17	\$180.00	0.20	\$36.00	Order profile reports and PPSA searches against 1340923 Ontario Inc. and Waxman Realty Company Inc. Review and report on same
SLG	22/12/17	\$775.00	0.10	\$77.50	Emails with H. Levy and W. Rostom to address valuation and 244 notices
TSJ	22/12/17	\$295.00	3.20	\$944.00	Review security; Discussion with S. Graff regarding same; Draft security opinion

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MGM	22/12/17	\$295.00	0.60	\$177.00	Review title summary prepared by T Jones for accuracy; Revise and recirculate same
CP	22/12/17	\$180.00	0.10	\$18.00	Order certified PPSA searches for 1340923 Ontario Inc. and Waxman Realty Company Inc.
SLG	28/12/17	\$775.00	0.80	\$620.00	Review opinion and revise same
CP	29/12/17	\$180.00	0.10	\$18.00	Review certified PPSA searches
TSJ	02/01/18	\$305.00	3.10	\$945.50	Receive and review certified PPSA searches; Draft security opinion
SLG	10/01/18	\$795.00	0.60	\$477.00	Review and review opinion to Farber; discussion with T. Jones
TSJ	10/01/18	\$305.00	2.10	\$640.50	Discussion with S. Graff regarding required revisions to Security Opinion; Finalize same
SLG	11/01/18	\$795.00	1.00	\$795.00	Revise opinion and issue same and email to McMillan and Farber
TSJ	11/01/18	\$305.00	1.50	\$457.50	Summarize security opinion conclusions in email to McMillan; Discussion with S. Graff regarding same; Minor cleanup revisions to draft opinion
SLG	16/01/18	\$795.00	0.20	\$159.00	Emails with H. Levy on offer and discussion with J. Nemers
JTN	16/01/18	\$375.00	0.10	\$37.50	Receive instruction from S. Graff re draft stalking horse bid agreement
JTN	17/01/18	\$375.00	3.50	\$1,312.50	Engaged with review of, revisions to and further drafting of stalking horse APA
JTN	18/01/18	\$375.00	0.20	\$75.00	Engaged with revisions to draft APA; Email to S. Graff re same
SLG	19/01/18	\$795.00	1.20	\$954.00	Review revised APA (stalking horse); email same to H. Levy; telephone call with McMillan re status
JTN	22/01/18	\$375.00	0.10	\$37.50	Email exchange with S. Graff re draft stalking horse bid
SLG	30/01/18	\$795.00	0.20	\$159.00	Telephone call with S. Brown-Ohrulik re document and changes

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	08/02/18	\$795.00	0.40	\$318.00	Telephone call with W. Rostom; review valuation of Altus and email Hylton
SLG	09/02/18	\$795.00	0.10	\$79.50	Email with H. Levy re Altus
SLG	13/02/18	\$795.00	0.30	\$238.50	Review email from W. Rostom; telephone call with S Brown-Okruhlik; telephone call with H Levy
SLG	14/02/18	\$795.00	0.50	\$397.50	Telephone call with H. Levy to discuss sale process
JTN	17/02/18	\$375.00	0.50	\$187.50	Telephone call with S. Graff re current status and potential options re next steps; Receipt and review of steps memorandum re same; Consider same
JTN	20/02/18	\$375.00	0.30	\$112.50	Email exchange and telephone call with S. Graff re steps memo and related matters
SLG	21/02/18	\$795.00	0.50	\$397.50	Conference call with S. Brown- Ohruhlik, W. Rostom, J. Nemers and H. Levy re location of hearing and sale process
JTN	21/02/18	\$375.00	0.60	\$225.00	Attend on conference call with working group
SLG	22/02/18	\$795.00	0.30	\$238.50	Conference call with H. Levy re sale process; discussion with J. Nemers
JTN	22/02/18	\$375.00	0.10	\$37.50	Telephone call with S. Graff
SLG	23/02/18	\$795.00	0.40	\$318.00	Review Sale Process doc; email from W. Rostom
JTN	23/02/18	\$375.00	0.60	\$225.00	Engaged with review of, revisions to and further drafting of stalking horse sale process; Email to S. Graff re same
<b>TOTAL:</b>			26.10	\$12,298.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	8.30	\$788.73	\$6,546.50
Timothy S. Jones (TSJ)	10.80	\$301.20	\$3,253.00
Christina Pugliese (CP)	0.40	\$180.00	\$72.00
Michael G. McDonald (MGM)	0.60	\$295.00	\$177.00
Jeremy T. Nemers (JTN)	6.00	\$375.00	\$2,250.00

<b>OUR FEE</b>	\$12,298.50
HST at 13%	\$1,598.81

**DISBURSEMENTS**

**COST INCURRED ON YOUR BEHALF AS AN AGENT**

Search Under P.P.S.A.	\$40.00
Due Diligence-Gov Fee	\$16.00

Total Agency Costs	\$56.00
--------------------	---------

**Subject to HST**

Service Provider Fee	\$22.50
Due Diligence	\$14.00
Imaging/Scanning	\$27.50
Photocopies - Local	\$33.75
Teraview Search	\$186.90

Total Disbursements	\$284.65
HST at 13%	\$37.00

**AMOUNT NOW DUE**

**\$14,274.96**

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP

Steven L. Graff

E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.3% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 6221521, Translt number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

**AIRD BERLIS**

279

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

A. Farber & Partners Inc.  
1600 - 150 York Street  
Toronto, ON  
M5H 3S5

Attention: Mr. Hylton Levy

**Account No.: 598463**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

May 16, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended April 30, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	26/02/18	\$795.00	0.30	\$238.50	Telephone call with W. Rostom re outcome of 9:30 am and jurisdiction
SLG	03/04/18	\$795.00	0.30	\$238.50	Telephone call with H. Levy; review emails; telephone call with McMillan re APS and next steps
JTN	03/04/18	\$375.00	0.60	\$225.00	Review and provide hand-written comments re APA blackline to S. Graff; Telephone call with S. Graff re same
SLG	05/04/18	\$795.00	1.20	\$954.00	Review APS
JTN	05/04/18	\$375.00	0.70	\$262.50	Engaged with review of and revisions to draft notice of application; Email exchange with S. Graff re same and related matters
SLG	06/04/18	\$795.00	1.20	\$954.00	Review and revise APS and revise schedule; review Notice of Application; emails with McMillan and telephone call with P. Denton and discussion with J. Nemers
JTN	06/04/18	\$375.00	0.10	\$37.50	Telephone call with S. Graff re next steps
JTN	07/04/18	\$375.00	0.20	\$75.00	Email exchanges with working group

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	08/04/18	\$795.00	0.80	\$636.00	Review Agreement; consider NDA; consider comments; exchange emails; discussion with H. Levy and McMillan
SLG	08/04/18	\$795.00	1.00	\$795.00	Review emails on NDA; review revisions to APS on call with McMillan; consider issues
JTN	08/04/18	\$375.00	0.60	\$225.00	Engaged with review of and revisions to draft NDA; Email exchanges with S. Graff and working group re same and related matters; Engaged with high-level review of draft Orders
SLG	09/04/18	\$795.00	1.40	\$1,113.00	Several telephone calls with J. Nemers; review of docs; telephone call with P. Denton and emails with H. Levy; conference call with Steven at McMillian, A. Winton; review orders
JTN	09/04/18	\$375.00	3.70	\$1,387.50	Telephone calls with S. Graff and email exchanges with working group re status and related issues; Engaged with review of and revisions to draft receivership order; Engaged with review of and revisions to draft sale process order; Engaged with review of and revisions to draft affidavit; Telephone call with client; Email to working group with comments re materials; Attend on conference call with working group; Attend to related matters as needed
SLG	10/04/18	\$795.00	2.00	\$1,590.00	Review Sale Guidelines, Order, Affidavit; discussion with J. Nemers; discussion with P. Denton and J. Levy; review APA; review emails
JTN	10/04/18	\$375.00	4.90	\$1,837.50	Attend on conference calls with client and broader working group; Email exchanges and meetings re same; Engaged with review of, revisions to and further drafting of court materials in anticipation of today's filing; Engaged with review of further updated APS from applicant's counsel; Attend to related matters as needed
SLG	11/04/18	\$795.00	0.10	\$79.50	Review emails re record and materials



LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
RTH	11/04/18	\$695.00	0.30	\$208.50	Telephone call from J. Nemers; Discussion with clerk
JTN	11/04/18	\$375.00	1.40	\$525.00	Email exchange with applicant's counsel; Email exchange and telephone call with client; Attend on conference call with working group re APS; Telephone calls with A. Silver and R. Hooke re title and related issues; Engaged with high-level review of application record; Emails to applicant's counsel and client re same; Attend to related matters as needed
AYS	11/04/18	\$395.00	0.40	\$158.00	Correspondence re joint and several liability wrt BDC charge registered on title to the subject lands
JTN	12/04/18	\$375.00	4.20	\$1,575.00	Telephone calls and email exchanges with client; Telephone call with A. Silver re parcel pages; Email exchanges with applicant's counsel; Engaged with review of, revisions to and drafting of Report; Engaged with review of, revisions to and further drafting of additional changes to draft Orders; Attend to related matters as needed
AYS	12/04/18	\$395.00	1.40	\$553.00	Review Vesting Order; Prepare updated parcel register wrt subject lands and review same; Amend schedules to vesting order;
SLG	13/04/18	\$795.00	0.60	\$477.00	Review Report of proposed receiver; comment on same
JTN	13/04/18	\$375.00	2.00	\$750.00	Engaged with further review of, revisions to and drafting of Report; Email to S. Graff re same
SLG	16/04/18	\$795.00	0.10	\$79.50	Review emails re status of report
JTN	16/04/18	\$375.00	1.70	\$637.50	Engaged with further revisions to draft Report; Telephone calls and email exchanges with client and applicant's counsel re same and related matters
JTN	17/04/18	\$375.00	2.80	\$1,050.00	Email exchanges and telephone calls with client and applicant's counsel re report; Engaged with further review of,

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					revisions to and drafting of same; Engaged with finalization of report; Attend to related tasks re service as needed; Engaged with high-level review of factum; Email exchange with S. Graff re same
SLG	18/04/18	\$795.00	0.50	\$397.50	Review sale materials (teaser and Globe article); telephone call with W. Rostom and H. Levy re BDC position
NS	18/04/18	\$260.00	1.00	\$260.00	Filed documents at Commercial List Court for J. Nemers
SLG	19/04/18	\$795.00	2.50	\$1,987.50	Review all materials and emails with W. Rostom and H. Levy; review orders and report; prepare for court attendance
SLG	20/04/18	\$795.00	4.00	\$3,180.00	Review emails re BDC position; review orders (revised); telephone call with W. Rostom and S. Okruhlik; attend court on application
SLG	26/04/18	\$795.00	0.20	\$159.00	Telephone call with H. Levy re status
JTN	30/04/18	\$375.00	0.10	\$37.50	Telephone call with S. Graff re status update
<b>TOTAL:</b>			42.30	\$22,683.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	16.20	\$795.00	\$12,879.00
Jeremy T. Nemers (JTN)	23.00	\$375.00	\$8,625.00
Randy T. Hooke (RTH)	0.30	\$695.00	\$208.50
Aaron Y. Silver (AYS)	1.80	\$395.00	\$711.00
Nicholas Smith (NS)	1.00	\$260.00	\$260.00

**OUR FEE** \$22,683.50  
HST at 13% \$2,948.86

**DISBURSEMENTS**

**Subject to HST**

Imaging/Scanning	\$13.00
Photocopies - Local	\$534.75
Teraview Search	\$76.80
Binding and Tabs	\$66.00
Photocopies	\$64.50
Deliveries/Parss	\$39.38
Total Disbursements	\$794.43
HST at 13%	\$103.28

**AMOUNT NOW DUE**

\$26,530.07

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP

Steven L. Graff  
E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

32621459.1

IN ACCOUNT WITH:

**AIRD BERLIS**

234

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

A. Farber & Partners Inc.  
1600 - 150 York Street  
Toronto, ON  
M5H 3S5

Attention: Mr. Hylton Levy

**Account No.: 605091**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

July 27, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 23, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	25/05/18	\$795.00	0.40	\$318.00	Review decision and telephone call with H. Levy
SLG	28/05/18	\$795.00	0.40	\$318.00	Review decision of Patillo, J.
SLG	29/05/18	\$795.00	0.50	\$397.50	Conference call with McMillan and Farber re next steps, approach and decision of Patillo, J.
JTN	30/05/18	\$375.00	0.50	\$187.50	Telephone call and email exchange with P. Denton; Receipt and review of His Honour's decision; Receipt and review of blacklined materials; Telephone call with S. Graff re same
SLG	01/06/18	\$795.00	0.30	\$238.50	Emails with McMillan
JTN	01/06/18	\$375.00	0.10	\$37.50	Receipt and review of emails from working group
JTN	04/06/18	\$375.00	0.30	\$112.50	Email exchanges and telephone call with client; Email to applicant's counsel
SLG	05/06/18	\$795.00	1.50	\$1,192.50	Attend 9:30 appointment before Patillo, J. to issue orders; review emails and revised orders; telephone call with H. Lely; coordinate sale process timeline and

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					milestones
JTN	05/06/18	\$375.00	1.60	\$600.00	Engaged with review of, revisions to and further drafting of confidentiality agreement, teaser, advertisement and certain website language; Receipt and review of issued and entered orders
JTN	15/06/18	\$375.00	0.20	\$75.00	Email exchange with client re service list and related matters; Engaged with review of service list
SLG	19/06/18	\$795.00	0.50	\$397.50	Telephone call with W. Rostom and C. Tedesco re claims process and resolutions; email H. Levy
JTN	19/06/18	\$375.00	0.10	\$37.50	Email exchange with client and S. Graff re prospect of claims process
SLG	26/06/18	\$795.00	0.20	\$159.00	Telephone call with N. Litwack re NDA
JTN	26/06/18	\$375.00	0.30	\$112.50	Receipt and review of voicemail and email from client; Consider nature of request; Email exchange with S. Graff re same; Email to client re same
SLG	27/06/18	\$795.00	0.20	\$159.00	Telephone call with N. Litwack; review NDA and emails to NASG
SLG	27/06/18	\$795.00	0.80	\$636.00	Telephone call with P. Denton and H. Levy re approach to claims process and dealing with NASG
JTN	28/06/18	\$375.00	0.10	\$37.50	Receipt and review of voicemail from P. Denton; Telephone call with P. Denton
SLG	04/07/18	\$795.00	1.00	\$795.00	Review pleadings; conference call with P. Denton and J. Nemers re approach to claims and next funds available from sale
JTN	04/07/18	\$375.00	1.00	\$375.00	Attend on conference call with client to discuss general update and next steps; Discussion with S. Graff re same; Engaged with review of, revisions to and further drafting of email from P. Denton

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	06/07/18	\$375.00	0.10	\$37.50	Receipt and review of email from P. Denton re pro forma calculations
JTN	07/07/18	\$375.00	1.00	\$375.00	Engaged with review and consideration of amended statement of claim re NASG and amended statement of defence and counterclaim re NASG
JTN	09/07/18	\$375.00	1.00	\$375.00	Engaged with review and mark-up of draft calculations received from client re anticipated proceeds and distributions related thereto; Email to client re same
SLG	10/07/18	\$795.00	1.20	\$954.00	Conference call with C. Tedesco and J. Nemers re review of issues in litigation; consider claims process; separate call with W. Rostom and Farbers re sale process and statement of adjustments
JTN	10/07/18	\$375.00	2.70	\$1,012.50	Prepare for and attend on conference call with C. Tedesco re NASG; Discussions with S. Graff re same; Receipt and review of voicemail from P. Denton; Telephone call with client and W. Rostom; Receipt and review of email from W. Rostom and attachments thereto; Discussion with S. Graff re same; Receipt and review of Waxman v. Waxman amended, amended statement of claim and related amended statements of defence; Receipt and review of email from client re CRA-related matters; Attend to related matters as needed
SLG	11/07/18	\$795.00	0.50	\$397.50	Review email and status of sale process
SLG	12/07/18	\$795.00	0.20	\$159.00	Discussion with J. Nemers re status and allocation of BDC debt
JTN	12/07/18	\$375.00	0.20	\$75.00	Telephone call with S. Graff; Email exchange with client
JTN	13/07/18	\$375.00	0.10	\$37.50	Voicemail for P. Denton

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	16/07/18	\$795.00	0.30	\$238.50	Discussion with J. Nemers re court date and report
JTN	16/07/18	\$375.00	2.90	\$1,087.50	Email exchange with W. Rostom re APA approval and BDC credit amount determination; Telephone call with P. Denton re same and related calculations and matters; Engaged with review of, revisions to and further drafting of First Report; Attend to related matters as needed
SLG	18/07/18	\$795.00	0.40	\$318.00	Discussion with J. Nemers re status and treatment of BDC mortgage claim
JTN	18/07/18	\$375.00	0.60	\$225.00	Email exchange with P. Denton re BDC; Receipt and review of emails between P. Denton and W. Rostom; Emails to and discussions with S. Graff re same
SLG	19/07/18	\$795.00	0.30	\$238.50	Telephone call with J. Nemers with respect to status of proceedings
JTN	19/07/18	\$375.00	1.50	\$562.50	Email to P. Denton re BDC; Engaged with further review of, revisions to and drafting of First Report
JTN	20/07/18	\$375.00	0.40	\$150.00	Engaged with further revisions to draft First Report; Email to S. Graff re same
JTN	23/07/18	\$375.00	0.70	\$262.50	Engaged with drafting of notice of motion re August 16 hearing; Telephone call with S. Graff re First Report
<b>TOTAL:</b>			24.10	\$12,691.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	8.70	\$795.00	\$6,916.50
Jeremy T. Nemers (JTN)	15.40	\$375.00	\$5,775.00

**OUR FEE** \$12,691.50

HST at 13%

\$1,649.90

**DISBURSEMENTS**

**Subject to HST**

Photocopies - Local  
Imaging/Scanning

\$39.75

\$49.25

Total Disbursements  
HST at 13%

\$89.00

\$11.57

**AMOUNT NOW DUE**

\$14,441.97

THIS IS OUR ACCOUNT HEREIN

Aird & Berlis LLP

Steven L. Graff

E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

33269417.1



IN ACCOUNT WITH:

**AIRD BERLIS**

239

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

A. Farber & Partners Inc.  
1600 - 150 York Street  
Toronto, ON  
M5H 3S5

Attention: Mr. Hylton Levy

**Account No.: 605954**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

July 31, 2018

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**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 31, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	23/07/18	\$795.00	0.40	\$318.00	Review report and J. Nemers revisions
JTN	25/07/18	\$375.00	0.20	\$75.00	Receipt and review of information regarding additional Crown liens; Consider same; Email to client re same
JTN	26/07/18	\$375.00	1.80	\$675.00	Receipt and review of emails from client and W. Rostom; Telephone call with P. Denton; Follow-up email exchanges with W. Rostom and D. Dudkiewicz; Engaged with revisions to First Report and notice of motion; Engaged with drafting of Ancillary Order; Email to client enclosing draft court materials; Attend to related matters as needed
CC	27/07/18	\$300.00	0.20	\$60.00	Search of title for property at 143 Adams Boulevard and providing same to J. Nemers; search of title for 4350 Harvester Road and providing parcel register to J. Nemers
JTN	27/07/18	\$375.00	0.10	\$37.50	Email exchange with clerk and receipt and review of updated parcel page registries

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	30/07/18	\$375.00	2.20	\$825.00	Engaged with review of and revisions to client comments to report; Telephone call and email exchange with client re same; Email exchange with AIM's counsel re related matters; Receipt and review of and revisions to draft amending agreement; Engaged with drafting of security opinion re BDC; Engaged with review of and revisions to draft AVO; Attend to related matters as needed
CP	30/07/18	\$205.00	0.20	\$41.00	Order, review and report on updated PPSA search for 1340923 Ontario Inc.
JTN	31/07/18	\$375.00	0.50	\$187.50	Email exchange with client; Email to broad working group re amending agreement, AVO, First Report and service list; Receipt and review of letter from C. Tedesco; Email thoughts to S. Graff re same
CP	31/07/18	\$205.00	0.10	\$20.50	Review certified PPSA search
<b>TOTAL:</b>			5.70	\$2,239.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	0.40	\$795.00	\$318.00
Jeremy T. Nemers (JTN)	4.80	\$375.00	\$1,800.00
Carlos Casasola (CC)	0.20	\$300.00	\$60.00
Christina Pugliese (CP)	0.30	\$205.00	\$61.50

**OUR FEE** \$2,239.50  
HST at 13% \$291.14

**DISBURSEMENTS**

**COST INCURRED ON YOUR BEHALF AS AN AGENT**

Search Under P.P.S.A. \$16.00

**Subject to HST**


Photocopies - Local	\$15.25
Teraview Search	\$67.80
Service Provider Fee	\$9.00
Imaging/Scanning	\$6.50

Total Disbursements	\$98.55
HST at 13%	\$12.81

**AMOUNT NOW DUE**

**\$2,658.00**

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP

  
Steven L. Graff  
E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

33327387.1

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF JEREMY THEODORE NEMERS

Sworn before me

this 1st day of August, 2018

A handwritten signature in cursive script, appearing to read "Harry J. Legal", is written over a horizontal line.

Commissioner for taking Affidavits, etc

## STATEMENT OF RESPONSIBLE INDIVIDUALS

*Aird & Berlis LLP's professional fees herein are made with respect to the following individuals*

<b>Lawyer</b>	<b>Call to Bar</b>	<b>Hrly Rate</b>	<b>Total Time</b>	<b>Value</b>
Randy Hooke	1989	\$695	0.30	\$ 208.50
Steven Graff	1991	\$775 (2017) \$795 (2018)	2.60 31.00	\$ 2,015.00 \$24,645.00
Aaron Silver	2013	\$395	1.80-	\$ 711.00
Jeremy Nemers	2014	\$375	49.20	\$18,450.00
Michael McDonald	2016	\$295	0.60	\$ 177.00
Timothy Jones		\$295 (2017) \$305 (2018)	4.1 6.7	\$ 1,209.50 \$ 2,043.50
<b>Clerk/Student</b>	<b>Call to Bar</b>	<b>Avg Hrly Rate</b>	<b>Total Time</b>	<b>Value</b>
Carlos Casasola	N/A	\$300.00	0.20	\$ 60.00
Christina Pugliese	N/A	\$180 (2017) \$205 (2018)	0.40 0.30	\$ 72.00 \$ 61.50
Nicholas Smith	N/A	\$260	1.00	\$ 260.00

*\*Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

AMERICAN IRON & METAL COMPANY INC.

- and -

1340923 ONTARIO INC. and WAXMAN REALTY  
COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**AFFIDAVIT OF JEREMY THEODORE NEMERS**

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa (LSUC # 55449N)**

Tel: (416) 865-3082

Fax: (416) 863-1515

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**Jeremy Nemers (LSUC # 66410Q)**

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Fax : (416) 863-1515

Email : [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

*Lawyers for A. Farber & Partners Inc., in its capacity as the court-  
appointed receiver of 1340923 Ontario Inc. and Waxman Realty  
Company Inc.*

234

# TAB 6

**SERVICE LIST**  
(as at June 20, 2018)

TO: **AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
P.O. Box 754  
Toronto ON M5J 2T9

**Steven L. Graff**  
Tel: (416) 865-7726  
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**Jeremy Nemers**  
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Fax: (416) 863-1515  
[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

*Lawyers for A. Farber & Partners Inc., the Court-Appointed Receiver*

AND TO: **A. FARBER & PARTNERS INC.**  
150 York Street, Suite 1600  
Toronto, ON M5H 3S5

**Hylton Levy**  
Tel: (416) 497-0150  
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**Paul J. Denton**  
Tel: (416) 496-3773  
[pdenton@farbergroup.com](mailto:pdenton@farbergroup.com)

*Court Appointed Receiver of Waxman Realty Company Inc. and 1340923  
Ontario Inc..*



AND TO: **MCMILLAN LLP**  
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Toronto, ON M5J 2T2

**Wael Rostom**

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**Stephen Brown-Okruhlik**

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*Lawyers for the Applicant*

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**Matthew G. Moloci**

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**Colleen Yamashita**

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*Lawyers for the Respondents*

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**

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**Andrew Winton**

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**Niklas Holmberg**

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[nholmberg@counsel-toronto.com](mailto:nholmberg@counsel-toronto.com)

*Lawyers for NASG Canada Inc.*

AND TO: **FASKEN MARTINEAU DUMOULIN LLP**

Bay Adelaide Centre  
333 Bay Street  
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Toronto, ON M5H 2T6

**Robert S. Harrison**

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[rharrison@fasken.com](mailto:rharrison@fasken.com)

**Gideon C. Forrest**

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[gforrest@fasken.com](mailto:gforrest@fasken.com)

*Lawyers for Morris Waxman, as assigned of the Estate of I. Waxman & Sons Limited, Morris Waxman, and Solid Waste Reclamation Inc.*

AND TO: **BENNETT JONES LLP**  
One First Canadian Place  
100 King Street West  
Suite 3400  
Toronto, ON M5X 1A4

**Richard B. Swan**  
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[swanr@bennettjones.com](mailto:swanr@bennettjones.com)

*Lawyers for Morris Waxman, as assigned of the Estate of I. Waxman & Sons Limited, Morris Waxman, and Solid Waste Reclamation Inc.*

AND TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice  
Ontario Regional Office  
Tax Law Section  
The Exchange Tower  
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Suite 3400, P.O. Box 36  
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**Diane Winters**  
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*Lawyers for the Minister of National Revenue*

AND TO: **MINISTRY OF FINANCE (ONTARIO)**  
Office of Legal Services  
33 King Street West, 6<sup>th</sup> Floor  
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**Kevin J. O'Hara**  
Tel: (905) 433-6934  
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*Lawyers for the Ministry of Finance (Ontario)*

AND TO: **BUSINESS DEVELOPMENT BANK OF CANADA**

25 Main Street West  
Suite 1900  
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**Michelle Pugliese-Watson**  
**Lead Representative, Financing**

Tel: (905) 570-7240  
Fax: (905) 572-4282

AND TO: **CRAWLEY MACKEWN BRUSH LLP**

Suite 800  
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Toronto, ON M5T 1X4

**Clark Tedesco**  
Tel: (416) 217-0884  
Fax: (416) 217-0220  
[ctedesco@cmbllaw.ca](mailto:ctedesco@cmbllaw.ca)

**Robert Brush**  
Tel: (416) 217-0822  
Fax: (416) 217-0220  
[rbrush@cmbllaw.ca](mailto:rbrush@cmbllaw.ca)

*Lawyers for Waxman Industrial Services Corp., Waxman Realty Company Inc.,  
1340923 Ontario Inc., Aaron Waxman, Jeremy Waxman, American Iron &  
Metal LP and American Iron and Metal GP Inc. in the action bearing Court File  
No. CV-14-10606-00CL*

AND TO: **MILLER THOMSON LLP**

255 Queens Avenue  
Suite 2010  
London, ON N6A 5R8

**Tony Van Klink**  
Tel: (519) 931-3509  
Fax: (519) 858-8511  
[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

*Lawyers for the Business Development Bank of Canada*

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AMERICAN IRON & METAL COMPANY INC.

-and-

1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.

Applicant

Respondents

Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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(returnable August 16, 2018)**

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