

**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 May 28, 2019)**

May 14, 2019

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

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**TAB 1**

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

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

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- and -

**1340923 ONTARIO INC. and  
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Respondents

**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 May 28, 2019)**

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 Tuesday, May 28, 2019 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 second report filed by Farber, in its capacity as the Receiver, dated May 13, 2019 (the “**Second Report**”) and the activities of the Receiver set out therein;
- (c) approving the fees and disbursements of the Receiver and its counsel, including an accrual for fees and disbursements to be incurred to the completion of these proceedings (the “**Fee Accrual**”);
- (d) approving the repayment of the Receiver’s borrowings;
- (e) after satisfying the fees and disbursements of the Receiver and its counsel, including the Fee Accrual, and after repaying the Receiver’s borrowings, authorizing and directing the Receiver to distribute the remaining funds in the Debtors’ estates in accordance with the Court’s decision in a separate motion filed by the Debtors, Aaron Waxman and Jeremy Waxman that is also returnable on May 28, 2019 (the “**Debtor Group Motion**”);
- (f) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, discharging Farber as the Receiver and releasing Farber from any and all liability that Farber has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Farber while acting in its capacity as the Receiver; and
- (g) 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, which, in substance, consisted of interests in two pieces of real property (the “**Real Property Interests**”);

- (b) the Receivership Order was granted notwithstanding the opposition of NASG Canada Inc. (“**NASG Canada**”), which, in separate litigation (the “**Action**”), is or was claiming (amongst other things) “*the imposition of a resulting and/or constructive trust over the [Real Property Interests] due to the conversion of or unjust enrichment relating to NASG Canada’s carbon scrap metal;*”
- (c) by way of an endorsement issued prior to the Receiver’s appointment, His Honour held that the Receiver’s appointment and the marketing, sale and vesting of the Real Property Interests were appropriate provided 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 [Canada’s] claims in the Action;*”
- (d) upon the Receiver’s appointment, and pursuant to a further Order of the Honourable Mr. Justice Pattillo of the Court made June 5, 2018, His Honour approved a stalking horse sale process in respect of the Real Property Interests (the “**Sale Process**”), including, without limitation, a stalking horse bid by American Iron & Metal Company Inc. (“**AIM**”);
- (e) AIM, which was the secured creditor of the Debtors that applied for the Receiver’s appointment, was also a tenant in common with the Debtors in respect of the real property underlying the Real Property Interests;
- (f) the Sale Process did not result in any offers other than the stalking horse bid by AIM, and the Receiver completed the Sale Process by declaring AIM’s stalking horse bid to be the winning bid (the “**Transaction**”);
- (g) pursuant to Orders of the Honourable Mr. Justice Dunphy of the Court made August 16, 2018, His Honour (amongst other things):

- (i) approved the Transaction, and vested in AIM all the Debtors' right, title and interest in and to the Real Property Interests, free and clear of all encumbrances (including, without limitation, the Action) (the "**Deleted Encumbrances**") except for certain identified permitted encumbrances;
- (ii) ordered that, for the purposes of determining the nature and priority of the Deleted Encumbrances, the net proceeds from the sale of the Real Property Interests shall stand in the place and stead of the Real Property Interests; and
- (iii) approved the reports of Farber dated April 17, 2018 (then in its capacity as the proposed Receiver) (the "**Proposed Receiver's Report**") and August 3, 2018 (in its capacity as the Receiver) (the "**First Report**"), the activities described therein and the fees and disbursements of the Receiver and its legal counsel for the period ending July 31, 2018;
- (h) the Transaction closed on August 17, 2018, and the Receiver has now filed with the Court its Second Report, outlining, amongst other things, the actions of the Receiver since the date of the First Report;
- (i) the Receiver's activities have been reasonable and responsible in accordance with the Receiver's mandate as provided by the Receivership Order;
- (j) 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;
- (k) 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;
- (l) the Receiver has also borrowed amounts under the Receivership Order;
- (m) after payment of the fees and disbursements of the Receiver and its counsel, and after repayment of the Receiver's borrowings, the Receiver is not aware of any

claims to the remaining funds in the Debtors' estates (the "**Surplus Funds**") apart from:

- (i) certain amounts owing to CRA;
  - (ii) amounts, if any, owing in respect of the Action; and
  - (iii) amounts, if any, owing in respect of a second action bearing court file number 07-CL-6901;
- (n) the administration of the receivership of the Debtors will come to an end once the Surplus Funds are distributed, the entitlement(s) to which distribution(s) is the subject matter of the Debtor Group Motion;
- (o) the other grounds and facts set out in the Second Report;
- (p) section 243 of the *Bankruptcy and Insolvency Act* (Canada);
- (q) section 101 of the *Courts of Justice Act* (Ontario);
- (r) rules 1.04, 2.03, 3.02, 37 and 41.06 of the *Rules of Civil Procedure* (Ontario); and
- (s) 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 Second 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: May 14, 2019

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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

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

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION  
(returnable May 28, 2019)**

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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	)	TUESDAY, THE 28TH DAY
	)	
JUSTICE	)	OF MAY, 2019

**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**

**DISCHARGE ORDER**

**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 Second Report of the Receiver dated May 13, 2019 (the “**Second Report**”) and the actions of the Receiver described therein; (ii) approving the fees and disbursements of the

Receiver and its counsel, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; (iii) approving the repayment of the Receiver's borrowings; (iv) distributing the funds in the Debtors' estates; (v) discharging Farber as the Receiver of the assets, undertakings and properties of the Debtors effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule "A" (the "**Discharge Certificate**"); and (vi) releasing Farber from any and all liability, as set out in paragraph 8 of this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report and appendices thereto, including the fee affidavits appended to the Second Report on behalf of the Receiver and its counsel (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present as indicated on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Susy Moniz sworn May 14, 2019, 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 is hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Second Report and the actions of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as described in the Second Report and as set out in the Fee Affidavits, be and are hereby approved.

4. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Second Report) be and is hereby approved.

5. **THIS COURT ORDERS** that the repayment of the Receiver's borrowings (as set out in the Second Report) be and is hereby approved.

6. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved by paragraphs 3 and 4 of this Order, and after repayment of the Receiver's borrowings herein approved by paragraph 5 of this Order, the Receiver be and is hereby authorized and directed to distribute the balance of any and all funds available, if any, in accordance with the Court's decision in a separate motion filed by the Debtors, Aaron Waxman and Jeremy Waxman that was heard by the Court today.

7. **THIS COURT ORDERS** that, upon the Receiver filing the Discharge Certificate, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Farber, in its capacity as the Receiver.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, Farber is hereby released and discharged from any and all liability that Farber now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Farber while acting in its capacity as the Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of

the foregoing, Farber is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

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.

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## SCHEDULE “A”

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

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

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**

## RECEIVER’S DISCHARGE CERTIFICATE

### RECITALS

(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, 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 1340923 Ontario Inc. (“**134Co**”) and Waxman Realty Company Inc. (“**Waxman**”, and together with 134Co, the “**Debtors**”).

(B) Pursuant to an Order of the Court made May 28, 2019 (the “**Discharge Order**”), Farber was discharged as the Receiver of all the assets, undertakings and properties of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all

matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Farber, in its capacity as the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

**THE RECEIVER CERTIFIES** the following:

1. all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

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

Name:

Title:

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**

**DISCHARGE ORDER**

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



**TAB 3**

Revised: May 11, 2010

Court File No. ———CV-18-595577-00CL

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

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY, THE #~~  
JUSTICE \_\_\_\_\_ ) ~~DAY OF MONTH, 20YR~~

BETWEEN:-

**PLAINTIFF**

Plaintiff

-and-

**DEFENDANT**

Defendant

THE HONOURABLE \_\_\_\_\_ ) TUESDAY, THE 28TH DAY  
\_\_\_\_\_ )  
JUSTICE \_\_\_\_\_ ) OF MAY, 2019

**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

**DISCHARGE ORDER**

**THIS MOTION**, made by [RECEIVER'S NAME] A. Farber & Partners Inc. ("Farber"), 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", undertakings and properties of 1340923 Ontario Inc. ("134Co") and Waxman Realty Company Inc. ("Waxman", and together with 134Co, the "Debtors"), for an order: 1. Order, *inter alia*: (i) approving the activities of the Receiver as set out in the report Second Report of the Receiver dated [DATE] May 13, 2019 (the "Report"); 2. "Second Report" and the actions of the Receiver described therein; (ii) approving the fees and disbursements of the Receiver and its counsel; 3. approving the distribution of the remaining proceeds available in the estate of the Debtor; ~~and~~, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; (iii) approving the repayment of the Receiver's borrowings; (iv) distributing the funds in the Debtors' estates; (v) 4. discharging [RECEIVER'S NAME] Farber as the Receiver of the undertaking, property and assets of the Debtor; and 5. assets, undertakings and properties of the Debtors effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule "A" (the "Discharge Certificate"); and (vi) releasing

~~[RECEIVER'S NAME]~~Farber from any and all liability, as set out in paragraph 58 of this Order<sup>1</sup>, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report, and appendices thereto, including the fee affidavits appended to the Second Report on behalf of the Receiver and its counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present as indicated on the counsel slip, no one else appearing for any other person on the service list, although properly served as evidenced by appears from the Affidavit affidavit of ~~[NAME]~~Susy Moniz sworn ~~[DATE]~~May 14, 2019, filed<sup>2</sup>;

1. **THIS COURT ORDERS** that the activitiestime 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 is hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Second Report and the actions of the Receiver, as set out in the Report, described therein be and are hereby approved.

3. ~~2.~~ **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set outdescribed in the Second Report and as set out in the Fee Affidavits, be and are hereby approved.

4. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Second Report) be and is hereby approved.

<sup>1</sup> If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

<sup>2</sup> This model order assumes that the time for service does not need to be abridged.

5. **THIS COURT ORDERS** that the repayment of the Receiver's borrowings (as set out in the Second Report) be and is hereby approved.

6. ~~3.~~ **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved; by paragraphs 3 and 4 of this Order, and after repayment of the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]<sup>3</sup>'s borrowings herein approved by paragraph 5 of this Order, the Receiver be and is hereby authorized and directed to distribute the balance of any and all funds available, if any, in accordance with the Court's decision in a separate motion filed by the Debtors, Aaron Waxman and Jeremy Waxman that was heard by the Court today.

7. ~~4.~~ **THIS COURT ORDERS** that ~~upon payment of the amounts set out in paragraph 3 hereof [and, upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report]~~the Discharge Certificate, the Receiver shall be discharged as Receiver of the ~~undertaking, property and assets, undertakings and properties~~ of the ~~Debtor~~Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME]~~Farber, in its capacity as the Receiver.

8. ~~5.~~ **THIS COURT ORDERS AND DECLARES** that ~~[RECEIVER'S NAME]~~, upon the Receiver filing the Discharge Certificate, Farber is hereby released and discharged from any

<sup>3</sup> This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

and all liability that ~~{RECEIVER'S NAME}~~Farber now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~{RECEIVER'S NAME}~~Farber while acting in its capacity as the Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~{RECEIVER'S NAME}~~Farber is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.<sup>4</sup>

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.

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<sup>4</sup> The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.

SCHEDULE "A"

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)AMERICAN IRON & METAL COMPANY INC.Applicant- and -1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.RespondentsAPPLICATION 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 AMENDEDRECEIVER'S DISCHARGE CERTIFICATERECITALS

(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, 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 1340923 Ontario Inc. ("**134Co**") and Waxman Realty Company Inc. ("**Waxman**", and together with 134Co, the "**Debtors**").

(B) Pursuant to an Order of the Court made May 28, 2019 (the "**Discharge Order**"), Farber was discharged as the Receiver of all the assets, undertakings and properties of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters

to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Farber, in its capacity as the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

**THE RECEIVER CERTIFIES** the following:

1. all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

Per:

Name:

Title:



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

DISCHARGE ORDER

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

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Document 2 ID	interwovenSite://AB-WS1/CM/35240484/2
Description	#35240484v2<CM> - Discharge Order (Waxman)
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# TAB 4

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**

**SECOND 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.**

**MAY 13, 2019**

**INTRODUCTION**

1. This report (this “**Second 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 (the “**Sale Process**”) in respect of the Debtors’ real property interests (the “**Real Property Interests**”) 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 2018 Endorsement**”) and June 5, 2018 are attached collectively to this Second Report as **Appendix “A”**.

3. A copy of the report dated April 17, 2018 filed by Farber, in its capacity as the proposed Receiver, is attached to this Second Report as **Appendix “B”** (the “**Proposed Receiver’s Report**”). A copy of the first report of the Receiver dated August 3, 2018 is attached to this Second Report as **Appendix “C”** (the “**First Report**”). Both the Proposed Receiver’s Report and the First Report have previously been approved by this Court.
4. As set out in the Proposed Receiver’s Report, two actions had been commenced in the Ontario Superior Court of Justice prior to the Receiver’s appointment, asserting, amongst other things, a constructive or resulting trust over some or all of the Real Property Interests. The Receivership Order was granted notwithstanding the opposition of NASG Canada Inc. (“**NASG**”), which had commenced one of these two actions (the “**NASG Action**”). The plaintiffs in the other action (the “**Waxman Action**”) did not oppose the receivership or the Sale Process.
5. As set out at paragraphs 29, 30, 33 and 46 of the May 2018 Endorsement referenced above, His Honour held, amongst other things, that the Receiver’s appointment and the vesting of the Real Property Interests from the receivership were appropriate provided 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 [NASG] Action.*”
6. The Sale Process did not result in any offers other than the stalking horse bid submitted by the applicant, American Iron & Metal Company Inc. (“**AIM**”), and the Receiver completed the Sale Process by declaring AIM’s stalking horse bid to be the winning bid for the Real Property Interests (the “**Transaction**”).

7. Pursuant to Orders of the Honourable Mr. Justice Dunphy of the Court made August 16, 2018, which Orders and accompanying endorsement are attached collectively to this Second Report as **Appendix “D”** (the “**August 2018 Orders**”), His Honour (amongst other things):
  - a. approved the Transaction and vested in AIM all the Debtors’ right, title and interest in and to the Real Property Interests, free and clear of all encumbrances (the “**Deleted Encumbrances**”) except for certain identified permitted encumbrances;
  - b. ordered that, for the purposes of determining the nature and priority of the Deleted Encumbrances, the net proceeds from the Transaction would stand in the place and stead of the Real Property Interests; and
  - c. approved the Proposed Receiver’s Report, the First Report, the activities of the Receiver described therein and the fees and disbursements of the Receiver and its counsel for the period ending July 31, 2018 and described in the fee affidavits appended to the First Report.
8. The Receiver closed the Transaction with AIM on August 17, 2018, and the Receiver is now filing with the Court this Second Report, describing, amongst other things, the actions of the Receiver since the date of the First Report.

## PURPOSE

9. The purpose of this Second Report, in addition to describing the actions of the Receiver since the date of the First Report, is to provide information that may be of assistance to this Court in respect of the Debtor Group Motion (as defined herein) and to seek an Order:
  - a. approving this Second Report and the activities of the Receiver described herein, including, without limitation, the Receiver’s projected final statement of actual receipts and disbursements dated May 8, 2019 (the “**Projected R&D**”);
  - b. approving the fees and disbursements of the Receiver and its legal counsel from August 1, 2018 onwards, including the Fee Accrual (as defined herein);
  - c. approving the repayment of the Receiver’s borrowings;

- d. after satisfying the fees and disbursements of the Receiver and its counsel, including the Fee Accrual, and after repaying the Receiver's borrowings, authorizing and directing the Receiver to distribute the remaining funds (the "**Surplus Funds**") in the Debtors' estates in accordance with the Court's decision in a separate motion filed by the Debtors, Aaron Waxman and Jeremy Waxman (together with the Debtors and Aaron Waxman, the "**Debtor Group**") that the Receiver understands is also returnable on May 28, 2019 (the "**Debtor Group Motion**");
- e. effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver (the "**Receiver's Discharge Certificate**"), discharging Farber as the Receiver and releasing Farber from any and all liability that Farber has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Farber while acting in its capacity as the Receiver; and
- f. such further and other relief as counsel may advise and this Court may permit.

#### **DISCLAIMER**

- 10. This Second Report has been prepared for the use of the Court and the Debtors' stakeholders in connection with the relief being sought at paragraph 9 of this Second Report. Accordingly, the reader is cautioned that this Second 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 Second Report for any other purpose.
- 11. In preparing this Second 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.

12. All references to dollars in this Second Report are in Canadian currency, unless otherwise noted.

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

13. The Receiver's activities, and those of its counsel, since the date of the First Report include:
  - a. preparing for, closing and attending to post-closing matters in respect of the Transaction;
  - b. responding to queries from stakeholders;
  - c. corresponding with Canada Revenue Agency ("CRA") regarding the Debtors' liabilities to the Crown and outstanding tax reporting due;
  - d. working with the Debtors and the Debtors' accounting firm to coordinate the updating of the Debtors' financial records and completing outstanding corporate tax and HST returns;
  - e. preparing for, attending at and engaging in lengthy communications with stakeholders in respect of numerous Court attendances scheduled by the Debtor Group, specifically:
    - i. a Court attendance on December 7, 2018 to schedule a motion that the Debtors advised they wished to bring to "*conclude the receivership and to distribute surplus proceeds to the Debtors*" and to "*seek a declaration that NASG Canada Inc.'s alleged contingent constructive trust claim and tracing remedy ought not prevent conclusion of the receivership and distribution of the surplus proceeds to the Debtors.*" A copy of the cover email from the Debtors' counsel in this regard (without attachments), together with His Honour's resulting endorsement scheduling the Debtors'

- proposed motion for two hours on January 17, 2019, is attached to this Second Report as **Appendix “E”**;
- ii. a Court attendance on January 16, 2019 to reschedule the Debtors’ proposed motion after the Debtors advised on January 7, 2019 that their materials would not be served or filed in sufficient time. A copy of the cover email from the Debtors’ counsel in this regard, together with His Honour’s resulting endorsement scheduling a two hour case conference to address the Debtors’ proposed motion on February 14, 2019, is attached to this Second Report as **Appendix “F”**;
  - iii. following service on February 1, 2019 of the Debtor Group Motion, a Court attendance on February 14, 2019 for the case conference. A copy of His Honour’s resulting endorsement scheduling the Debtor Group Motion for half a day on May 31, 2019 (which date the Receiver understands from the Debtor Group’s counsel was later vacated) is attached to this Second Report as **Appendix “G”**; and
  - iv. a Court attendance on March 20, 2019 scheduled by the Debtor Group for the purpose of obtaining an earlier return date for the Debtor Group Motion (which the Debtor Group then advised would no longer be opposed by NASG) and for the additional potential purposes of directing the Receiver to make a distribution in the interim of \$467,268.76 to CRA from the Surplus Funds (the **“Proposed CRA Distribution”**), precluding CRA from accessing additional monies from the Debtors and potentially challenging the fees and disbursements of the Receiver and its counsel. Copies of the draft form of Order circulated by the Debtor Group’s counsel, the corresponding email chain between the Debtor Group’s counsel and the Receiver’s counsel and His Honour’s resulting endorsement adjourning NASG-related matters to April 24, 2019 and permitting the Proposed CRA Distribution to be heard at the same time if unopposed are attached collectively to this Second Report as **Appendix “H”**;

f. engaging in communications with the Debtor Group's counsel in respect of the April 24, 2019 Court attendance, which, as agreed during the previous Court attendance, the Receiver did not attend (with the NASG-related matters not directly involving the Receiver and the Proposed CRA Distribution not being opposed by the Receiver). The Receiver understands from the Debtor Group's counsel that no substantive relief was granted at the April 24 Court attendance because certain NASG-related matters remained unresolved. Copies of the email exchanges between the Debtor Group's counsel and the Receiver's counsel, together with His Honour's resulting endorsement scheduling a further hearing for May 28, 2019, are attached collectively to this Second Report as **Appendix "I"**; and

g. preparing this Second Report.

## CLOSING OF THE TRANSACTION

14. As set out at paragraph 8 of this Second Report, the Receiver closed the Transaction with AIM on August 17, 2018. A table summarizing the Transaction's cash proceeds paid into the Receiver's trust accounts is set out below:

Waxman Realty Company Inc. and 1340923 Ontario Inc. AIM Agreement of Purchase and Sale - Consolidated Statement of Adjustments - Closing Effective August 17, 2018			
	<u>Burlington (i.e., former Real Property Interests of Waxman)</u>	<u>Brantford (i.e., former Real Property Interests of 134Co)</u>	<u>Total</u>
Purchase Price	5,000,000.00	1,650,000.00	6,650,000.00
Deposit (delivered on June 5, 2018)	270,676.69	89,323.31	360,000.00
Interest on the deposit	827.60	273.11	1,100.71
AIM's credit bid	2,057,152.61	278,854.49	2,336,007.10
AIM's assumption of debt	0.00	505,511.78	505,511.78
Balance paid on closing	<b>\$ 2,671,343.10</b>	<b>\$ 776,037.31</b>	<b>\$ 3,447,380.41</b>

15. As set out in the above table, AIM satisfied the purchase price of \$6.650 million by a combination of cash, credit bid and assumption of debt from Business Development Bank of

Canada ("BDC"), such that the Receiver received cash proceeds on closing of \$3,447,380.41 (in addition to the deposit of \$360,000).

16. As a result of the closing of the Transaction and ancillary arrangements between AIM and BDC, the Receiver understands that the BDC Encumbrance (as defined in the Receivership Order) has been satisfied in full.

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

17. The Receiver understands that, prior to the issuance of the Receivership Order, AIM and the Debtor Group made their own side arrangements regarding their respective contributions to the fees and disbursements of the Receiver and the Receiver's counsel, which side arrangements the Receiver understands gave rise to a subsequent dispute between AIM and the Debtor Group regarding their respective contributions. The Receiver is not involved in this private dispute.
18. The fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP ("A&B"), are governed by paragraphs 18, 19 and 20 of the Receivership Order, as follows:
  - a. paragraph 18 of the Receivership Order provides, in substance, that the Receiver and A&B shall be paid their reasonable fees and disbursements and shall be entitled to rely upon the Receiver's Charge (as defined in the Receivership Order) as security for such fees and disbursements;
  - b. paragraph 19 of the Receivership Order provides, in substance, that the Receiver and A&B are required to pass their accounts from time to time; and
  - c. paragraph 20 of the Receivership Order provides, in substance, 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 and its counsel, and such monies shall constitute advances against its remuneration and disbursements when and as approved by the Court.

19. The Receiver and A&B have maintained detailed records of their time and costs relating to the receivership proceedings.
20. The fees and disbursements of the Receiver and A&B incurred to and including July 31, 2018 were previously approved by this Court pursuant to one of the August 18 Orders (see Appendix "D").
21. The Receiver has incurred additional fees in the amount of \$71,901.50, disbursements of \$903.00 plus HST of \$9,347.20 for the period July 26, 2018 to and including April 30, 2019. A copy of the Affidavit of Paul Denton in this regard sworn May 8, 2019, which includes copies of the Receiver's corresponding detailed invoices, is attached hereto as **Appendix "J"**. With the exception of the most recent dockets for April 2019, these invoices were also provided to the Debtor Group's counsel, at its request, on March 18, 2019 (in the case of dockets to December 31, 2018) and on April 22, 2019 (in the case of additional dockets to March 31, 2019).
22. A&B has incurred additional fees and disbursements in the amount of \$41,295.38, plus HST of \$5,343.40, for the period July 31, 2018 to and including April 30, 2019. A copy of the Affidavit of Ian Aversa in this regard sworn May 7, 2019, which includes copies of A&B's detailed invoices, is attached hereto as **Appendix "K"**. With the exception of the most recent dockets for April 2019, these invoices were also provided to the Debtor Group's counsel, at its request, on March 18, 2019 (in the case of dockets to February 28, 2019) and on April 22, 2019 (in the case of additional dockets to March 31, 2019).
23. Provided that there is no opposition to the relief sought in this Second Report, provided that such relief is granted and provided that neither the Receiver nor A&B is required to take any further steps (including, without limitation, attend at any further Court attendance) in respect of the Debtor Group Motion or any other potential motion brought by any of the stakeholders (other than physically distributing the Surplus Funds in accordance with the outcome of the Debtor Group Motion), the Receiver estimates that the additional fees and disbursements for itself and A&B to complete these proceedings will be no more than \$20,000.00, excluding disbursements and HST (collectively, the **"Fee Accrual"**).

24. The Receiver is of the view that its fees and disbursements and those of A&B are fair and reasonable. The Receiver respectfully requests the approval of its fees and disbursements and those of A&B.

#### **RECEIVER'S BORROWINGS**

25. Pursuant to paragraph 21 of the Receivership Order, the Receiver borrowed \$26,000 from AIM on June 27, 2018 to fund interim expenditures, with an interest rate equal to 1% above the prime commercial lender rate of The Bank of Nova Scotia. A copy of the Receiver's borrowings certificate in this regard is attached to this Second Report as **Appendix "L"**. Assuming that these funds are paid prior to June 30, 2019, the accrued interest on such borrowings is anticipated to be between \$1,140 and \$1,250.

#### **THE PROJECTED R&D**

26. Attached as **Appendix "M"** is the Receiver's Projected R&D, showing a net estimated balance of approximately \$3.455 million after payment of the fees and disbursements of the Receiver and A&B (including the Fee Accrual) and after repayment of the Receiver's borrowings, but before payment of any of the Surplus Funds.

#### **THE DEBTOR GROUP MOTION**

27. As set out above, the Debtor Group Motion has been brought by the Debtor Group to address how the Surplus Funds (i.e., after payment of the fees and disbursements of the Receiver and A&B (including the Fee Accrual) and repayment of the Receiver's borrowings) ought to be distributed.
28. Attached collectively to this Second Report as **Appendix "N"** are the affidavits of Aaron Waxman, without exhibits, sworn January 30, 2019 and March 14, 2019 (the "**Waxman Affidavits**"), which have been served in the context of the Debtor Group Motion, and which, amongst other things, provide Mr. Waxman's evidence as to the outstanding debts of the Debtors.
29. After payment of amounts owing to CRA (the quantum for which the Waxman Affidavits advise has been agreed upon between the Debtors and CRA), the Receiver is not aware of

any outstanding claims to the remaining Surplus Funds other than shareholder loans/advances and amounts, if any, owing in respect of the NASG Action and the Waxman Action. Accordingly, provided that the fees and disbursements of the Receiver and A&B (including the Fee Accrual) are paid and that the Receiver's borrowings are repaid, the Receiver believes it is appropriate under the circumstances: (i) to allow the Debtor Group to proceed with the Debtor Group Motion without any further participation by the Receiver; and (ii) for the Receiver to distribute the Surplus Funds in accordance with the Court's decision in the Debtor Group Motion.

### **DISCHARGE**

30. After satisfying the fees and disbursements of the Receiver and A&B (including the Fee Accrual), repaying the Receiver's borrowings and distributing the Surplus Funds in accordance with the Court's decision in the Debtor Group Motion, the substantive administration of the receivership of the Debtors will have come to an end.

31. Accordingly the Receiver recommends that it be permitted to file the Receiver's Discharge Certificate at such time.

### **RECOMMENDATIONS**

32. The Receiver respectfully requests that this Honourable Court make an order granting the relief sought by the Receiver, as summarized at paragraph 9 of this Second Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13<sup>TH</sup> DAY OF MAY, 2019.**

**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

**TAB A**



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

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

<b>THE HONOURABLE MR.</b>	)	<b>TUESDAY, THE 5th</b>
	)	
<b>JUSTICE PATTILLO</b>	)	<b>DAY OF JUNE, 2018</b>



**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  
(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.

- 2 -

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;

- 3 -

- 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;

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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;

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- 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.

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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

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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.

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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

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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  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

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Tel: 416.865.7043  
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Lawyers for the Applicant

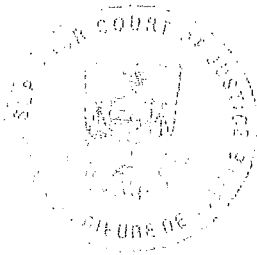




Court File No. CV-18-595577-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 5th
	)	
JUSTICE PATTILLO	)	DAY OF JUNE, 2018



AMERICAN IRON & 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

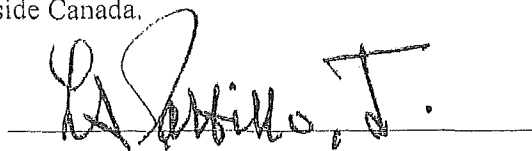
Bidder forthwith in the event that such Break Fee becomes owing pursuant to the terms and conditions of the Stalking Horse Agreement.

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.

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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:

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- (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



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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.

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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 " <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 "Purchaser");</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 ("CIM") 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.	Interested Parties will have until 4:00 pm Eastern Daylight Time, on Tuesday, July 10, 2018 (the "Bid Deadline") to submit competing bids (hereinafter called "Competing Bids"), 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 "Deposit"). The Deposit will be refunded in the event an Offer, as submitted, is not accepted by the Receiver. Competing Bids are to be made using the Stalking Horse Agreement of Purchase and Sale ("APS") template and are to be without conditions, other than a condition for Court Approval.	On or before 4:00 PM (EDT), July 10, 2018

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	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

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**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@memillan.ca](mailto:wael.rostom@memillan.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:

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

Court File No. 

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

THE HONOURABLE

)

 DAY, THE 

)

JUSTICE

)

DAY OF , 2018

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

**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 

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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



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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

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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

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

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: \_\_\_\_\_

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**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

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

<b>Reg. No.</b>	<b>Date</b>	<b>Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
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)**

<b>Reg. No.</b>	<b>Date</b>	<b>Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
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.

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## 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

D-1

**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**

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Lawyers for the Applicant



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

Page: 2

[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.

Page: 3

[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 proprietary 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 proprietary 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.

Page: 5

[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 pars. 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.

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### 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

Page: 7

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.', written over a horizontal line.

L. A. Pattillo J.



9:30 A.M.  
COUNSEL SLIP

Mc.

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

NO ON LIST 5

AMERICAN IRON & METAL COMPANY INC.

TITLE OF PROCEEDING ✓ 134 0923 ONTARIO INC. et al.

COUNSEL FOR:

PHONE & FAX NOS

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 appointing the receiver and approving the sale process (over)

COUNSEL FOR:

PHONE & FAX NOS

DEFENDANT(S)

RESPONDENT(S)

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 in claim brought by NASG

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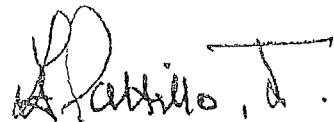
416 865-7726 (ph)

416 863-1500 (fax)

for AFARBER & PARTNERS - APPROVED

-2.

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

 R. P. Peltier, T.

**TAB 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**

**REPORT OF A. FARBER & PARTNERS INC.,  
IN ITS CAPACITY AS PROPOSED RECEIVER OF WAXMAN REALTY  
COMPANY INC. AND 1340923 ONTARIO INC.  
(April 17, 2018)**

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

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

AMERICAN IRON ORE AND METAL LP

Applicant

- and -

WAXMAN REALTY COMPANY INC. and 1340923 CANADA INC.

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  
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Suite 1800, Box 754  
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*Solicitors for the Proposed Receiver*

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**TAB C**

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

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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.

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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;



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- 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"**.

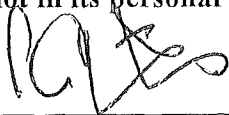
#### **RECOMMENDATIONS**

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

**TAB D**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 16TH DAY

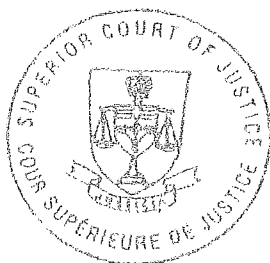
)

JUSTICE

CF DUNPHY

)

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.

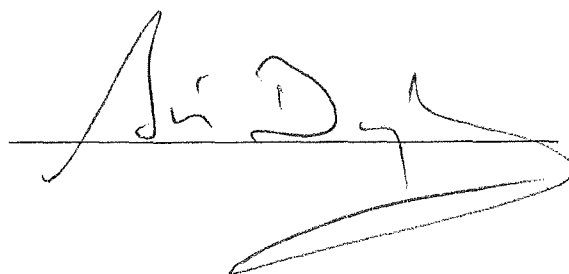
6. **THIS COURT ORDERS** that, notwithstanding:

- (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.

A large, stylized handwritten signature in black ink, appearing to be 'A. D. G.', written over a horizontal line.

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

AUG 16 2018

PER / PAR: 

**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.**

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**

**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**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, 181 Bay Street  
Toronto, ON M5J 2T9

**Steven L. Graff (LSUC # 31871V)**  
Tel: (416) 865-7726  
Fax: (416) 863-1515  
E-mail: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Jeremy Nemers (LSUC # 66410Q)**  
Tel: (416) 865-7724  
Fax: (416) 863-1515  
E-mail: [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

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

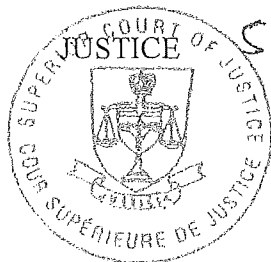


Court File No. CV-18-595577-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

THURSDAY, THE 16TH DAY



OF AUGUST, 2018

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
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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)

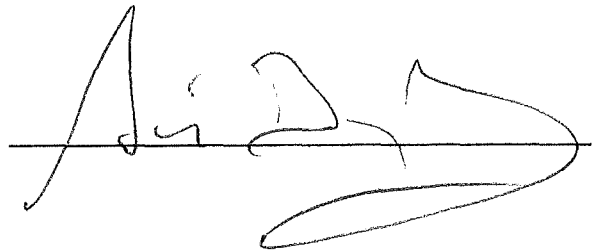
approving the report filed by Farber, in its capacity as the proposed Receiver, dated April 17, 2018 (the “**Proposed Receiver’s Report**”); (ii) approving the First Report of the Receiver dated August 3, 2018 (the “**First Report**”) and the activities of the Receiver set out therein; and (iii) approving 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.

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name 'A. D.' followed by a large, sweeping flourish.

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

AUG 16 2018

PER / PAR:

A small, stylized handwritten signature in black ink, consisting of several sharp, vertical strokes.

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**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, 181 Bay Street  
Toronto, ON M5J 2T9

**Steven L. Graff (LSUC # 31871V)**  
Tel: (416) 865-7726  
Fax: (416) 863-1515  
E-mail: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Jeremy Nemers (LSUC # 66410Q)**  
Tel: (416) 865-7724  
Fax: (416) 863-1515  
E-mail: [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

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



## COUNSEL SLIP

Court File No. CN-18-595577-00CLDate: Aug 16th 2018No. On List 6Title of Proceeding American Iron & Metal Co. Inc.1340923 Ontario Inc

## Counsel for:

Plaintiff(s) ☐Applicant(s) ☐Petitioner(s) ☐

MOVING PARTY -

A FARBER &amp; PARTNERS

AIRD &amp; BERLIS LLP

STEVEN GRAFF

sgraff@airdberlis.com

Phone No. 416 865-7726Fax No. 416 863-1500

## Counsel for:

Defendant(s) ☐Respondent(s) ☐

American Iron &amp; Metal

McMillan LLP

WAEZ ROSTOM

wael.rostom@mcmillan.ca

Phone No. 416.865.7790Fax No. 416.865.7048

SF. Dwyer J

16 Aug 2018

I have reviewed the Receiver's report and am satisfied the requested relief is appropriate. The form of orders requested has also been reviewed and I have signed both.



**TAB E**

**From:** Christine Hutton <chutton@shlaw.ca>  
**Sent:** December-03-18 3:31 PM  
**To:** Hylton Levy; Paul Denton (pdenton@farbergroup.com); Steve Graff; Jeremy Nemers; Robert Brush (rbrush@cmbllaw.ca); Clarke Tedesco (CTedesco@CMBLaw.ca); Andrew Winton; nholmberg@counsel-toronto.com; nholmberg@counsel-toronto.com; Richard Swan (swanr@bennettjones.com)  
**Cc:** Wael Rostom (wael.rostom@mcmillan.ca); Stephen Brown-Okruhlik; rharrison@fasken.com; Gideon Forrest (gforrest@fasken.com); diane.winters@justice.gc.ca; kevin.ohara@fin.gov.on.ca; tvanklink@millerthomson.com  
**Subject:** AIM and WRC/134 - Receivership - 17L301  
**Attachments:** Hearing Request Form Dec 3 2018.pdf

Counsel:

We are writing on behalf of the Debtors, Waxman Realty Company Inc. and 1340923 Ontario Inc. We wish to schedule a 9:30 a.m. appointment before Justice Hainey this Friday, December 7, 2018.

The Debtors wish to schedule a motion to conclude the receivership and to distribute surplus proceeds to the Debtors. It is anticipated that the Debtors' motion will be opposed by NASG Canada Inc. Accordingly, the Debtors' will seek a declaration that NASG Canada Inc.'s alleged contingent constructive trust claim and tracing remedy ought not prevent conclusion of the receivership and distribution of the surplus proceeds to the Debtors.

We require your signature on the Requisition Form if you intend to attend and participate at the hearing.

We look forward to hearing from you.

Yours very truly,

Matthew G. Moloci

**Christine Hutton | Legal Assistant**  
On Behalf of Matthew G. Moloci (P.C.) LL.B., Partner



*Lawyers and Trade-mark Agents*  
One James Street South, 14th Floor | Hamilton, Ontario L8N 3P9  
[shlaw.ca](http://shlaw.ca) | [classactionlaw.ca](http://classactionlaw.ca)  
☎: 905.523.1333 ext. 233 | 📠: 905.523.5878 | ✉: [chutton@shlaw.ca](mailto:chutton@shlaw.ca)

MATTHEW G. MOLOCI | 905-526-4377 | \* [moloci@shlaw.ca](mailto:moloci@shlaw.ca) |

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9:30 A.M.  
COUNSEL SLIP

165  
H

COURT FILE NO CV-18-595577-00CL

DATE DEC 7, 2018

NO ON LIST 3

TITLE OF  
PROCEEDING

AMERICAN IRON & METAL COMPANY INC  
✓ 1340923 ONTARIO INC et al.

COUNSEL FOR:  
PLAINTIFF(S)  
APPLICANT(S)  
PETITIONER(S)

PHONE & FAX NOS

COUNSEL FOR:  
DEFENDANT(S)  
RESPONDENT(S) Andrew Winton & Niklas Holmberg  
for  
NASG Canada

PHONE & FAX NOS

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416 598 3730 (CF)

awinton@lsg.ca

nholmberg@lsg.ca

Matt Moloci for Debtors -  
WAYMAN REALTY CORP and  
1340923 ONTARIO

905-523-4377 (T)

905-523-5878 (F)

moloci@slaw.ca

Claire Tedesco  
for AIM, Wayman's

416-217-0110

416-217-0220

STEVEN GRAFF  
AIRD & BERLIS LLP  
for J. FARBER & PARTNERS  
sgraff@airdberlis.com

416 865-7726

416 863 1515

December 7, 2018

2 hour hearing scheduled  
for January 17/19 before  
the Debt cleared.

Harry

**TAB F**

**Subject:** FW: 17L301- FW: American Iron v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

**From:** Colleen Yamashita [<mailto:cyamashita@shlaw.ca>]

**Sent:** January-07-19 10:17 AM

**To:** [awinton@counsel-toronto.com](mailto:awinton@counsel-toronto.com); Steve Graff ; [CTedesco@CMBLaw.ca](mailto:CTedesco@CMBLaw.ca); Robert Brush ; Niklas Holmberg

**Cc:** Matt Moloci ; MGM Team

**Subject:** 17L301- FW: American Iron v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Gentlemen:

Please see the email below forwarded to the Commercial List last Friday regarding the proposed motion scheduled for January 17, 2019.

We will be in touch regarding scheduling a new Court date. In the meantime, as Matt is away on holidays, please do not hesitate to contact me should you have any questions/concerns.

Kind regards,

Colleen

Colleen Yamashita | Partner



SCARFONE HAWKINS LLP

Lawyers and Trade-Mark Agents

One James Street South, 14th Floor | Hamilton, Ontario L8P 4R5

☎: 905.523.1333 ext. 268 | 📠: 905.523.5878 | ✉: [cyamashita@shlaw.ca](mailto:cyamashita@shlaw.ca)

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**From:** Christine Hutton <[chutton@shlaw.ca](mailto:chutton@shlaw.ca)>

**Sent:** January 4, 2019 4:11 PM

**To:** [Toronto.Commercialist@jus.gov.on.ca](mailto:Toronto.Commercialist@jus.gov.on.ca)

**Cc:** Matt Moloci <[moloci@shlaw.ca](mailto:moloci@shlaw.ca)>; Colleen Yamashita <[cyamashita@shlaw.ca](mailto:cyamashita@shlaw.ca)>

**Subject:** American Iron v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Sir/Madam:

We have a motion scheduled to be heard on January 17, 2019 for 2 hours before Justice Hainey in the above-noted matter. Our materials will not be served and filed in sufficient time to allow NASG counsel to respond.

Accordingly, we ask that the fixed time and date with Justice Hainey be cancelled.

We will follow-up with Justice Hainey and counsel to schedule a new date.

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Yours very truly,

Matthew G. Moloci

Christine Hutton | Legal Assistant  
On Behalf of Matthew G. Moloci (P.C.) LL.B., Partner



SCARFONE HAWKINS LLP

*Lawyers and Trade-mark Agents*

One James Street South, 14th Floor | Hamilton, Ontario L8N 3P9

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☎: 905.523.1333 ext. 233 | 📠: 905.523.5878 | ✉: [chutton@shlaw.ca](mailto:chutton@shlaw.ca)

MATTHEW G. MOLOCI | 905-526-4377 | \* [moloci@shlaw.ca](mailto:moloci@shlaw.ca) |

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9:30 A.M.

169

COUNSEL SLIP

H

COURT FILE NO. CV-18-595577-00CL DATE JAN 16, 2019

NO ON LIST 2

TITLE OF PROCEEDING J 1.340923 AMERICAN IRON & METAL COMPANY INC. et al.

COUNSEL FOR: NASC Canada  
PLAINTIFF(S) Niklas Holmberg, Capt. Sullivan  
APPLICANT(S)  
PETITIONER(S)

PHONE & FAX NOS  
416-464-7885  
holmberg@ldg.ca

COUNSEL FOR:  
DEFENDANT(S)  
RESPONDENT(S)

PHONE & FAX NOS

Jeremy Nemers,  
for the Court-appointed Receiver

T 416-863-1500  
F 416-863-1515

Clarke Tedesco  
for Workman Defendants

416-217-0820  
416-217-0220

WYGODNY, ADAM J.  
for the Estate of Sameer & ELKO

PH: 416-364-4900  
FX: 416-364-3865  
awygodny@blydla.com

Matt Moloci  
for the Debtors

(T) 905-523-1333  
(F) 416-905-523-5878  
moloci@shlaw.ca

January 16, 2019  
2-hour case conference  
scheduled with the over  
on ~~Jan~~ February 14, 2019

2 - hours to be scheduled  
with me  
for ~~Feb~~ March 1/19.

The dates have  
been cleared.

Hainey J.

over

**TAB G**

11:00 A.M.

171

1-1

# COUNSEL SLIP

COURT FILE NO CV-18-595577-00CL

DATE FEB 14, 2019

NO ON LIST 5

AMERICAN IRON & METAL COMPANY INC.

TITLE OF  
PROCEEDING

✓ 1340923 ONTARIO INC et al

COUNSEL FOR:

PHONE & FAX NOS

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S) →

COUNSEL FOR:

PHONE & FAX NOS

DEFENDANT(S)

RESPONDENT(S)

Andrew Winton +

Niklas Holmberg

for NASC Canada

(T) 416-644-5342

(F) <sup>(416)</sup> 590-3730

Clarke Tedesco

Counsel For AIM Defendants & Workman Defendants  
in NASC Action

T- 416-217-0110

F- 416-217-0220

ctedesco@cmblaw.ca

MATT MOLOC

MARK MIRANKETI, STUDENT

for RESPONDENTS

T- 905-526-4377

F- 905-523-5878

JEREMY NEMERS

Counsel for the Court-appointed Receiver

(a representative of which, P. Denton, is  
also in attendance)

T 416-863-1500

F 416-863-1515

jnemers@airdberlis.com

February 14, 2019

This Motion shall proceed  
on May 31, 2019 for  $\frac{1}{2}$   
day at 10 AM.

Harvey J.

**TAB H**

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

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

THE HONOURABLE  
JUSTICE G.A. HAINEY

)  
)  
)

WEDNESDAY, THE 20<sup>TH</sup>  
DAY OF MARCH, 2019

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

**ORDER**

THIS MOTION, made by the respondents, 1340923 Ontario Inc. and Waxman Realty Company Inc., was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Motion Record of the Respondents (Motion for Various Interim Relief) dated February 1, 2019 and the Supplementary Motion Record of the Respondents (Motion for Various Interim Relief) dated March 15, 2019 and on hearing the submissions of the lawyer for



the respondents, and being advised that none of the receiver or any other party is opposed to this order,

1. THIS COURT ORDERS that the Receiver shall pay to the Canada Revenue Agency the amount of \$467,268.76, to be applied to the outstanding indebtedness of the respondents as follows:
  - (a) Waxman Realty Company Inc., Income Tax Account No. 801845660 RC0001, in the amount of \$145,528.20;
  - (b) Waxman Realty Company Inc., H.S.T. Account No. 801845660 RT0001, in the amount of \$15,480.49;
  - (c) 1340923 Ontario Inc., Income Tax Account No. 867451825 RC0001, in the amount of \$292,617.25; and,
  - (d) 1340923 Ontario Inc., H.S.T. Account No. 867451825 RT0001, in the amount of \$13,642.82.
2. THIS COURT ORDERS that upon payment pursuant to paragraph 1 above, any claims that the Canada Revenue Agency has or had, including liens and deemed trusts, that otherwise attached to the net proceeds from the sale of the Purchased Assets pursuant to the Approval and Vesting Order of Justice S.F. Dunphy dated August 16, 2018 shall be expunged and discharged as against the respondents.

---

*(Signature of Judge)*

AMERICAN IRON & METAL COMPANY INC.  
Applicant

-and- 1340923 ONTARIO INC. et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**SCARFONE HAWKINS LLP**

One James Street South  
14th Floor  
P.O. Box 926, Depot 1  
Hamilton, Ontario  
L8N 3P9

MATTHEW G. MOLOCI (LSO# 40579P)  
moloci@shlaw.ca

Tel: 905-523-1333  
Fax: 905-523-5878

Lawyers for the respondents



**Jeremy Nemers**

**From:** Matt Moloci <moloci@shlaw.ca>  
**Sent:** March-19-19 8:41 PM  
**To:** Jeremy Nemers  
**Cc:** Paul J. Denton; hlevy@farbergroupp.com; Steve Graff; Clarke Tedesco (CTedesco@CMBLaw.ca)  
**Subject:** RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Jeremy,

My apologies. Yes, I overlooked that we were informed of Paul's planned absence this week.

With respect to the NASG settlement bar orders, that is Clarke's matter and I understand that that may need to be scheduled for hearing.

With respect to the Respondents' return of motion and request for an order for payout to CRA, we will not request that order until the NASG settlement bar orders are obtained. Accordingly, we will put that over and scheduled with Clarke's matter if that is what happens tomorrow morning.

With respect to the Respondents' return of motion and request for an earlier return of its motion (and the bringing of the Receiver's motion), the Respondents wish to have that scheduled.

With respect to the Respondents' concerns regarding the Receiver's/Receiver's Counsel's fees, those issues remain outstanding and are the subject matter of what our client wishes to discuss with you and the Receiver tomorrow, at least on a preliminary without prejudice basis. Perhaps through those discussions we can gain a better understanding and/or some common ground. We can also discuss (and hopefully resolve) the proposed interim payout to CRA in the context of your comments below and the priority of the Receiver's fees, etc.

I hope the above assists.

Best regards,

Matt

-----Original Message-----

**From:** Jeremy Nemers <jnemers@airdberlis.com>  
**Sent:** March 19, 2019 8:23 PM  
**To:** Matt Moloci <moloci@shlaw.ca>  
**Cc:** Paul J. Denton <pdenton@farbergroupp.com>; hlevy@farbergroupp.com; Steve Graff <sgraff@airdberlis.com>  
**Subject:** Re: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Thanks for your email Matt. However, as per the below email exchanges, Paul is away this week.

Hylton from the Receiver's office plans on attending with me tomorrow at your 9:30 chambers appointment. I don't know what his schedule is like afterwards (but I have a hard-stop at 11:15 a.m.).

Per the below email exchanges, the Receiver and its counsel are still largely in the dark as to what relief, if any, is (still) being sought tomorrow, the official status of the NASG litigation, what NASG's position is with respect to the relief (if any) being sought tomorrow and your clients' position as to whether they plan on challenging the fees or disbursements of the Receiver and its counsel. While I'm sure we can find some time to speak with you and your client after tomorrow's appointment (whether immediately thereafter or at another time), any insight that you are able to provide with respect to these issues prior to tomorrow's court attendance would be helpful.

Thanks,

Jeremy

Sent from my iPhone

On Mar 19, 2019, at 7:55 PM, Matt Moloci <moloci@shlaw.ca<mailto:moloci@shlaw.ca>> wrote:

Jeremy,

I assume that Paul will be attending with you tomorrow morning.

Will you and Paul have some time after the appointment with Justice Hainey to have some discussions with Aaron Waxman and I?

If so, Aaron will join us tomorrow morning.

Please let me know.

Best regards,

Matt

From: Jeremy Nemers <jnemers@airdberlis.com<mailto:jnemers@airdberlis.com>>

Sent: March 18, 2019 12:08 PM

To: Matt Moloci <moloci@shlaw.ca<mailto:moloci@shlaw.ca>>

Cc: Steve Graff <sgraff@airdberlis.com<mailto:sgraff@airdberlis.com>>; Hylton Levy <hlevy@farberggroup.com<mailto:hlevy@farberggroup.com>>; 'Paul J. Denton' <pdenton@farberggroup.com<mailto:pdenton@farberggroup.com>>; Clarke Tedesco (CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca>)

<CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Thanks for providing some insight as to the NASG issue.

As per my below email, absent the consent of NASG, and subject to understanding your clients' position regarding whether they are challenging the fees or disbursements of the Receiver and its counsel (which your below email does not address, notwithstanding that you raised this issue in your email of March 14, 2019), the Receiver cannot recommend making an interim distribution to CRA at this time, which we will advise the Court accordingly on Wednesday.

Thanks,

Jeremy

Jeremy Nemers  
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com<mailto:jnemers@airdberlis.com>

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From: Matt Moloci [mailto:moloci@shlaw.ca]

Sent: March-18-19 11:57 AM

To: Jeremy Nemers <jnemers@airdberlis.com<mailto:jnemers@airdberlis.com>>

Cc: Steve Graff <sgraff@airdberlis.com<mailto:sgraff@airdberlis.com>>; Hylton Levy <hlevy@farbergroupp.com<mailto:hlevy@farbergroupp.com>>; 'Paul J. Denton' <pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com>>; Clarke Tedesco (CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca>) <CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Jeremy,

Thank you for your email and attachments provided below.

With respect to our clients' proposed draft Order for the Wednesday 9:30 a.m. appointment with Justice Hainey, please let us know whether you/your client have any proposed changes to the draft order. I assume that there may be customary bankruptcy/insolvency language that you may prefer that I may have omitted.

Clarke Tedesco has also booked an appointment on Wednesday at 9:30 a.m. with Justice Hainey as well to deal with the NASG settlement and proposed orders. Our clients' motion and proposed draft Order for payment out to CRA, is contingent upon the NASG settlement orders being signed. If there are issues between the parties with respect to the NASG settlement orders requiring the further adjournment and scheduling of those orders, then we will also adjourn our clients' motion to proceed with those. We believe that we will have the consent of NASG provided the NASG settlement orders are granted. I have communicated with Andrew Winton to let him know that we will not proceed to request our proposed draft order if the NASG matter is adjourned.

I hope that clarifies the NASG aspects of your email below.

Best regards,

Matt

From: Jeremy Nemers <jnemers@airdberlis.com<mailto:jnemers@airdberlis.com>>

Sent: March 18, 2019 11:12 AM

To: Matt Moloci <moloci@shlaw.ca<mailto:moloci@shlaw.ca>>

Cc: Steve Graff <sgraff@airdberlis.com<mailto:sgraff@airdberlis.com>>; Hylton Levy <hlevy@farbergroupp.com<mailto:hlevy@farbergroupp.com>>; 'Paul J. Denton' <pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Matt,

Thank you for your email.

As you and your clients know, the fees and disbursements of the Receiver and the Receiver's counsel to July 31, 2018 (save and except for a few late dockets) were approved by the Court pursuant to the Order of the Honourable Mr. Justice Dunphy made August 16, 2018.

Attached are the invoices of the Receiver's counsel from that time to the end of February 2019. As you know, Mr. Denton from the Receiver's office has been away since late last week and is away this week, so we have been unable to provide you with all the Receiver's corresponding invoices; however, those to the end of December 2018 are attached. In addition, prior to your below email, your last request for a fee and disbursement update was made on Friday, January 25, 2019, and was provided to you on Monday, January 28, 2019, so you should have a fairly good

indication as to where fees and disbursements stand, particularly as the Receiver and its counsel have been dealing almost exclusively since that time with motions and court attendances that you have scheduled.

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As you and your clients know, any fee estimates given in respect of these proceedings were based on (amongst other things) there being no opposition to the relief sought and no need for multiple court attendances. As you and your clients also know, several court attendances were required to deal with material opposition before the Receiver was even appointed, and the stakeholders have continued to fight with one another (both in and out of court) subsequent to the Receiver's appointment, causing costs to accrue even further. Indeed, since the real property transaction closed on August 17, 2018, the vast majority of the Receiver's time and the Receiver's counsel's time (when not working with your clients' accountants to bring the Debtors' financial statements up to date) has been spent managing requests (both in and out of court) with respect to your clients' dispute with NASG.

You advised us last week, on an unofficial basis, that your clients' dispute with NASG has now been resolved. We continue to await official confirmation of same. Additionally, you now purport to bring a motion returnable on short notice at a 9:30 appointment on Wednesday to distribute certain monies to CRA while also positioning your clients for a potential dispute with the Receiver and its counsel in respect of professional fees.

We wish to remind you that any monies owing to CRA: (i) rank behind the Receiver's Charge (as defined in the Order appointing the Receiver); (ii) rank behind the Receiver's Borrowings Charge (as defined in the same Order); and (iii) depending on the outcome of the NASG dispute, may also rank behind monies that may or may not be owing to NASG (which claim by NASG is for essentially the totality of all funds in the receivership).

Accordingly, absent the consent of NASG, and subject to understanding your clients' position regarding whether they are challenging the fees or disbursements of the Receiver and its counsel, the Receiver cannot recommend making an interim distribution to CRA at this time, which we will advise the Court accordingly on Wednesday.

Thanks,

Jeremy

Jeremy Nemers  
Aird & Berlis LLP

T 416.865.7724  
E [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)<<mailto:jnemers@airdberlis.com>>

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From: Matt Moloci [mailto:moloci@shlaw.ca]

Sent: March-14-19 9:22 AM

To: Jeremy Nemers

<jnemers@airdberlis.com<mailto:jnemers@airdberlis.com<mailto:jnemers@airdberlis.com%3cmmailto:jnemers@airdberlis.com>>>; Paul J. Denton CA (NZ) CIRP  
(pdenton@farberfinancial.com<mailto:pdenton@farberfinancial.com<mailto:pdenton@farberfinancial.com%3cmmailto:pdenton@farberfinancial.com>>>  
<pdenton@farberfinancial.com<mailto:pdenton@farberfinancial.com<mailto:pdenton@farberfinancial.com%3cmmailto:pdenton@farberfinancial.com>>>

Subject: FW: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Jeremy and Paul,

Thank you for taking the time to speak with me yesterday regarding outstanding issues and a path to conclusion of the receivership proceedings.

Our clients have expressed their concerns regarding the Receiver's/Receiver's counsel's fees, particularly given that fees incurred and claimed through to August 2018 were more than twice the original estimate for the entire proceeding.

We ask that you provide us with your invoices/accounts since August 18, 2018, together with supporting documentation. As discussed, you will be seeking court approval of fees in the Receiver's next report and motion, our clients request your accounts and supporting documentation in advance to allow time for their review and consideration.

Best regards,

Matt

From: Jeremy Nemers

<jnemers@airdberlis.com<mailto:jnemers@airdberlis.com<mailto:jnemers@airdberlis.com%3cmmailto:jnemers@airdberlis.com>>>

Sent: March 12, 2019 5:37 PM

To: Matt Moloci

<moloci@shlaw.ca<mailto:moloci@shlaw.ca<mailto:moloci@shlaw.ca%3cmmailto:moloci@shlaw.ca>>>



Cc: Clarke Tedesco  
 (CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca%3cmmailto:CTedesco@CMBLaw.ca>>>); Steve Graff  
 <sgraff@airdberlis.com<mailto:sgraff@airdberlis.com<mailto:sgraff@airdberlis.com%3cmmailto:sgraff@airdberlis.com>>> 'Paul J. Denton'  
 <pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com%3cmmailto:pdenton@farbergroupp.com>>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Thanks Matt. Speak with you tomorrow. In the interim, please see the attached communication (with its own attachment), which will hopefully be of some assistance during our call in addressing CRA-related matters.

Thanks,

Jeremy

Jeremy Nemers

Aird & Berlis LLP

T 416.865.7724

E  
 jnemers@airdberlis.com<mailto:jnemers@airdberlis.com<mailto:jnemers@airdberlis.com%3cmmailto:jnemers@airdberlis.com>>>

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From: Matt Moloci [mailto:moloci@shlaw.ca]

Sent: March-12-19 5:33 PM

To: Jeremy Nemers  
<jnemers@airdberlis.com<mailto:jnemers@airdberlis.com<mailto:jnemers@airdberlis.com%3cmmailto:jnemers@airdberlis.com>>>

Cc: Clarke Tedesco  
(CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca%3cmmailto:CTedesco@CMBLaw.ca>>>); Steve Graff  
<sgraff@airdberlis.com<mailto:sgraff@airdberlis.com<mailto:sgraff@airdberlis.com%3cmmailto:sgraff@airdberlis.com>>>>; 'Paul J. Denton'  
<pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com%3cmmailto:pdenton@farbergroupp.com>>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Hi Jeremy,

I am available from 10 to 10:30 tomorrow morning. I agree that it would be useful to have a call.

I've sent an invite.

Best regards,

Matt

From: Jeremy Nemers  
<jnemers@airdberlis.com<mailto:jnemers@airdberlis.com<mailto:jnemers@airdberlis.com%3cmmailto:jnemers@airdberlis.com>>>

Sent: March 12, 2019 5:24 PM

To: Matt Moloci  
<moloci@shlaw.ca<mailto:moloci@shlaw.ca<mailto:moloci@shlaw.ca%3cmmailto:moloci@shlaw.ca>>>

Cc: Clarke Tedesco  
(CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca%3cmmailto:CTedesco@CMBLaw.ca>>>); Steve Graff  
<sgraff@airdberlis.com<mailto:sgraff@airdberlis.com<mailto:sgraff@airdberlis.com%3cmmailto:sgraff@airdberlis.com>>>>; 'Paul J. Denton'  
<pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com<mailto:pdenton@farbergroupp.com%3cmmailto:pdenton@farbergroupp.com>>>

Subject: RE: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

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Thanks Matt. I think it would be helpful for you and I to speak with the Receiver also on the line. To that end, Paul has advised that he is available tomorrow between 10 a.m. and noon. Are you able to speak during that window?

I am unfortunately at a contested hearing on Thursday, and Paul is then leaving for the March break starting the Friday, so we are hoping we can chat with you tomorrow.

Thanks,

Jeremy

Jeremy Nemers

Aird & Berlis LLP

T 416.865.7724

E

[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)<<mailto:jnemers@airdberlis.com><<mailto:jnemers@airdberlis.com>%3c<mailto:jnemers@airdberlis.com>>>>

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If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Matt Moloci [<mailto:moloci@shlaw.ca>]

Sent: March-12-19 3:41 PM

To: Jeremy Nemers

[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)<<mailto:jnemers@airdberlis.com><<mailto:jnemers@airdberlis.com>%3c<mailto:jnemers@airdberlis.com>>>>

Cc: Clarke Tedesco

[CTedesco@CMBLaw.ca](mailto:CTedesco@CMBLaw.ca)<<mailto:CTedesco@CMBLaw.ca><<mailto:CTedesco@CMBLaw.ca>%3c<mailto:CTedesco@CMBLaw.ca>>>>

MBLaw.ca>>)

<CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca<mailto:CTedesco@CMBLaw.ca%3cmailto:CTedesco@CMBLaw.ca>>>

184

Subject: American Iron & Metal Company Inc. v. 1340923 and Waxman Realty - Receivership - Court File No. 18-595577-00CL - Our File No. 17L301

Hi Jeremy,

I am working toward resolution of the CRA/Ontario issues, which I understand to be the only issues outstanding in the receivership proceedings. I expect we will have a draft order for payment out to CRA that will proceed on an unopposed or consent basis.

Other than that, I assume NASG will consent, or not oppose, conclusion of the receivership proceedings and payment out of court, particularly so that we can facilitate payment to NASG.

Mr. Swan has previously advised on behalf of Michael Waxman/Waxman Estate that he does not oppose payment out of court of the surplus proceeds to our firm in trust.

I am scheduling a 9:30 a.m. appointment with Justice Hainey for next Wednesday, March 20, 2019, to speak to our clients' motion that is currently scheduled to be heard on a contested basis on May 31, 2019. That motion is no longer opposed by NASG so that contested hearing appointment will not be necessary.

As discussed yesterday, I will request an earlier return date for our clients' motion seeking to conclude the receivership proceedings. Please let me know if you're available. In the meanwhile, I suggest we discuss timing and any other issues that you believe are outstanding.

Please let me know and/or call to discuss.

Best regards,

Matt





9:30 A.M.

185

H

COUNSEL = SLIP

COURT FILE NO. CV-18-595577-00CL

DATE: MAR 20, 2019

No. ON LIST 2

TITLE OF  
PROCEEDING

AMERICAN IRON & METAL COMPANY INC.  
V 1340923 ONTARIO INC. et al.

Phone & Fax No

COUNSEL FOR: ~~Affidavit~~  
Plaintiff(s)  
Applicant(s)  
Petitioner(s)

COUNSEL FOR: WAYMAN REALTY CORP and 1340923 ONTARIO INC.

Phone & Fax No

Defendant(s)  
Respondent(s) MOVING PARTIES

Matt Meloci, Scarlett Hawkins (T) 905-523-1333  
(F) 905-523-5878

Jeremy Nemers  
for the Court-appointed Receiver

T 416-863-1500  
F 416-863-1515

Niklas Holmberg - NASG Coord.

416-464-7855  
nholmberg@lsg.ca

March 20, 2019

Hearing re proposed  
CRA payment scheduled  
for April 24, 2019 & be  
heard at same time



9:30 A.M.

186 H

COUNSEL - SLIP

COURT FILE NO. CV-14-10606-00CL

DATE: MAR 20, 2019

No. ON LIST 1

TITLE OF  
PROCEEDING

NASQ CANADA INC.

✓ BOULIANE, JOSEPH HOWARD CAMILE et al.

COUNSEL FOR:

Plaintiff(s)

Applicant(s)

Petitioner(s)

Niklas Holmberg - NASQ Canada

Phone & Fax No

416-464-7855

nholmberg@1015.ca

COUNSEL FOR:

~~Defendant(s)~~

Respondent(s)

Clarke Telesco

Exr Waxman Defendants

Phone & Fax No

March 20, 2019

2-hour hearing scheduled  
for April 24, 2019 at  
10 AM

Hardy J

# TAB I



5-27 187  
**Jeremy Nemers**

---

**From:** Jeremy Nemers  
**Sent:** April-30-19 3:40 PM  
**To:** 'Agnes Gradzik'; 'Matt Moloci'  
**Cc:** Steve Graff; 'Paul J. Denton'; Hylton Levy  
**Subject:** RE: 1340923 Ontario Inc. et al. ats. American Iron & Metal Company Inc. - 17L301

Thanks Matthew and Agnes for the below update from your side.

We have diarized the May 28 hearing date for the Receiver's discharge motion, and we intend to serve our motion materials on full service to the service list ahead of time.

Thanks,

Jeremy

**Jeremy Nemers**  
**Aird & Berlis LLP**

416.865.7724  
jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

**From:** Agnes Gradzik [mailto:agradzik@shlaw.ca]  
**Sent:** April-24-19 3:09 PM  
**To:** Jeremy Nemers <jnemers@airdberlis.com>  
**Cc:** Steve Graff <sgraff@airdberlis.com>; 'Paul J. Denton' <pdenton@farbergroup.com>; Hylton Levy <hlevy@farbergroup.com>; MGM Team <mgmteam@shlaw.ca>  
**Subject:** 1340923 Ontario Inc. et al. ats. American Iron & Metal Company Inc. - 17L301

Mr. Nemers,

Further to your email below and our attendance on our clients' motion in the receivership matter this morning, we advise that there was some opposition to the bar order arising from the settlement in the NASG action. Justice Hailey scheduled the bar order motion to be heard before another judge on May 22, 2019. As a result, we adjourned our clients' motion seeking payment from the receivership to the CRA and advised Justice Hailey of the anticipated receiver's motion seeking discharge. Justice Hailey scheduled one hour for the receiver's motion and our clients' motion to proceed on May 28, 2019. I expect that the bar order issues and any issues relating to receiver's fees will be resolved well before May 28<sup>th</sup> and our clients' motion and the receiver's motion will proceed on an unopposed basis. A copy of the endorsement of Justice Hailey is attached.

We look forward to hearing from you on your return from vacation.

Yours very truly,

Matthew G. Moloci

Agnes Gradzik | Legal Assistant  
On Behalf of Matthew G. Moloci (P.C.) LL.B., Partner

Lawyers and Trade-mark Agents

One James Street South, 14th Floor | Hamilton, Ontario L8N 3P9

[shlaw.ca](http://shlaw.ca) | [classactionlaw.ca](http://classactionlaw.ca)

☎: 905.523.1333 ext. 238 | 📠: 905.523.5878 | ✉: [agradzik@shlaw.ca](mailto:agradzik@shlaw.ca)

MATTHEW G. MOLOCI | 905-526-4377 | \* [moloci@shlaw.ca](mailto:moloci@shlaw.ca) |

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**WARNING:** From time to time, our spam filters may eliminate legitimate emails from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

**From:** Jeremy Nemers <[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)>

**Sent:** April 16, 2019 3:58 PM

**To:** Matt Moloci <[moloci@shlaw.ca](mailto:moloci@shlaw.ca)>

**Cc:** Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; 'Paul J. Denton' <[pdenton@farbergroupp.com](mailto:pdenton@farbergroupp.com)>; Hylton Levy <[hlevy@farbergroupp.com](mailto:hlevy@farbergroupp.com)>

**Subject:** Waxman Receivership

Hi Matt,

Thanks for the calls this afternoon.

As discussed, it was agreed in Chambers with His Honour during the last Court attendance that the Receiver would not attend at the April 24 Court attendance. We understand that the purpose of the April 24 hearing is limited to two discreet issues:

- a) a two-hour hearing to address matters as between NASG Canada Inc. and Joseph Howard Camile Boulaine et al., in respect of which the Receiver is not involved; and
- b) if unopposed, a brief attendance in respect of your clients' proposed distribution to CRA in the aggregate amount of \$467,268.76 (plus any interest, if any, that may have accrued since March 20, 2019) ("**Your Proposed CRA Distribution**"). As we advised the Court at the last attendance, the Receiver is not opposed to Your Proposed CRA Distribution, provided that everyone understands that:
  - (i) the funds remaining with the Receiver will continue to be impressed with the Receiver's Charge and the Receiver's Borrowings Charge (as both terms are defined in the Receivership Order); and
  - (ii) you have raised the possibility that your clients may challenge the fees of the Receiver and its counsel at the Receiver's discharge hearing, the prospect of which will necessitate additional resources to be expended by the Receiver and its counsel (which, for greater certainty, are secured by the Receiver's Charge).

As you and I discussed, I will be away from the office starting this evening to and including April 28. As also discussed, the Receiver plans on bringing its discharge motion in May, and both the Receiver and its counsel are available for the discharge hearing on any day during the weeks of May 21 and May 27 (subject to His Honour's availability) if you wish to reserve Court time for same during my absence, failing which we will schedule Court time upon my return. It is the Receiver's intention to serve its discharge motion record on full service to all members of the service list in the receivership proceedings.

All the best,

Jeremy

Jeremy Nemers  
Aird & Berlis LLP

☎ 416.865.7724

✉ [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.  
If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.





10:00

COUNSEL SLIPCOURT FILE NO. CV-18-00595577-00CLDATE: APR 24 2019No. ON LIST 7TITLE OF  
PROCEEDINGAMERICAN IRON & METAL  
COMPANY INC.

V.

1340923 ONTARIO INC.  
et al.

COUNSEL FOR:

Plaintiff (s)  
Applicant (s)  
Petitioner (s)Matthew G. Moloci  
Debtors, 1340923 ONTARIO INC. and  
WAYMAN REALTY CORP.

Phone &amp; Fax No

905-523-1333  
905-523-5878  
moloci@shlaw.ca

COUNSEL FOR:

Defendant (s)  
Respondent (s)

Phone &amp; Fax No

April 24/19

1 hour hearing  
scheduled with  
me on May 28/19

Harvey J

**TAB 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's fees and costs to July 31, 2018 were approved by the Court on August 16, 2018.

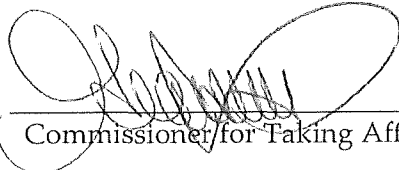
4. The Receiver has rendered further invoices in this matter, for the period July 26, 2018 to April 30, 2019 with total fees of \$71,901.50 plus HST of \$9,347.20 and disbursements of \$903.00. A summary of time is attached herewith as Exhibit A. A copy of the invoices rendered for that period are attached as Exhibit B. There was some time that was not previously entered July 26 to 1, 2018, which is reflected in this Affidavit and related invoices.

5. The Receiver's activities over that period are more fully reported on the Receiver's Second Report.

6. The total of the Receiver's fees as outlined in Exhibit A is \$71,901.50 together with disbursements of \$903.00 and HST of \$9,347.20, the sum of which equals \$82,151.70. The average hourly rate in respect of time as outlined in Exhibit A is \$477.75.

7. 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 8<sup>th</sup> day of May, 2019



Commissioner for Taking Affidavits

GEANINA SCHMIDT, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: April 6, 2021.

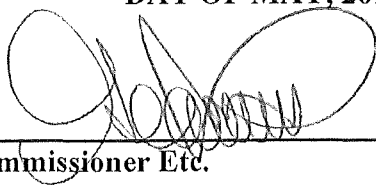


Paul J. Denton, CA (NZ), CIRP, LIT



## EXHIBIT A

THIS IS EXHIBIT "A" TO  
THE AFFIDAVIT OF PAUL J. DENTON  
SWORN BEFORE ME THIS 8<sup>th</sup>  
DAY OF MAY, 2019



---

A Commissioner Etc.


GEANINA SCHMIDT, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: April 6, 2021.

A. FARBER & PARTNERS INC.  
1340923 ONTARIO INC. and WAXMAN REALTY COMPANY INC.  
SUMMARY OF RECEIVER'S FEES  
JULY 26, 2018 to APRIL 30, 2019

6

**EXHIBIT B**

**THIS IS EXHIBIT "B" TO  
THE AFFIDAVIT OF PAUL J. DENTON  
SWORN BEFORE ME THIS 8<sup>TH</sup>  
DAY OF MAY, 2019**

  
\_\_\_\_\_  
**A Commissioner Etc.**

**GEANINA SCHMIDT, A Commissioner, etc.,  
Province of Ontario, for A. Farber & Partners Inc.  
Expires: April 6, 2021.**

**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

September 25, 2018

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 14913

---

**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of August 1, 2018 to August 17, 2018:**

DATE	SERVICE	STAFF
08/01/2018	Consulting fees - Corporate Attend to finalization of report appendices including affidavit of fees and interim receipts and disbursements with respect to August 16, 2018 hearing	Denton
08/01/2018	Consulting fees - Corporate Document production including Affidavit	Binelli
08/01/2018	Consulting fees - Corporate Review of draft documents to be served in the Receivers Report and motion for approval of sale of assets; Discussions with Paul Denton and review of various emails with Aird & Berlis	Levy
08/02/2018	Consulting fees - Corporate Turn report; review of exhibits; send over affidavit of fees to AB; review of e-mails; liaise with AIM	Denton
08/03/2018	Consulting fees - Corporate Attend to finalization of report re: August 16, 2018 hearing; respond to e-mail from AIM re: fees	Denton
08/03/2018	Consulting fees - Corporate Email correspondence with BDC regarding motion materials and first report of receiver; directions to A Binelli regarding posting documents to case website; drafted updated wording for case website.	Litwack
08/08/2018	Consulting fees - Corporate Update website	Binelli

# FARBER

08/08/2018	Consulting fees - Corporate Updated cased website wording and documents for uploading.	Litwack
08/13/2018	Consulting fees - Corporate Receipt and review of BDC loan payment balance effective Aug 17; forward to AIM and legal counsel; work on fee allocation schedule, as between AIM and the debtors; provide to McMillan	Denton
08/13/2018	Consulting fees - Corporate Review payout statement from BDC; forward same to P Denton for discussion.	Litwack
08/13/2018	Banking - Corporate Bank reconciliation for July 2018.	Lloyd-Key
08/13/2018	Banking - Corporate Bank reconciliation for July 2018 - 1340923 Ontario.	Lloyd-Key
08/14/2018	Consulting fees - Corporate Review of e-mails; validate to BDC payout balance specifically, legal fees and the prepayments Indemnity through liaison with BDC and legal counsel; draft and provide e-mail McMillan on same; call with W Rostom	Denton
08/14/2018	Consulting fees - Corporate Review of the draft materials and emails from Jeremy Nemers; Discussions with Paul Denton; Review of emails regarding BDC payout statement	Levy
08/15/2018	Consulting fees - Corporate Prepare for and call AIM re receiver and legal fees to July 31, 2018 versus estimates set out in Monetization memo; liaise with legal counsel on closing agenda scheduled for Aug 17; review of closing agenda; liaison with legal counsel on same	Denton
08/16/2018	Consulting fees - Corporate Update website	Binelli
08/16/2018	Consulting fees - Corporate Interest calculation for Paul Denton	Blunda
08/16/2018	Consulting fees - Corporate Attendance at court hearing to approval sale on obtain other relief; liaise with Aird Berlis re closing matters including the statement of adjustments; provide interest accrual to legal counsel; provide further particulars on BDC payout; review of e-mails; review of orders as issued	Denton

# FARBER

08/16/2018 Consulting fees - Corporate Litwack  
 Drafted updated for case website; direction to staff  
 regarding posting of new court orders and endorsement;  
 review of same with P Denton

08/17/2018 Consulting fees - Corporate Denton  
 Attending to numerous closing matters, including  
 review of documents and execution of same; coordinate  
 distribution of signed documents to Aird Berlis

	Total for Services	\$ 9,484.00
Expenses: Photocopies, faxes, travel etc.	Total for Expenses	<u>113.40</u>
	Subtotal	9,597.40
	HST	<u>1,232.92</u>
	Current Amount Due	<u>\$ 10,830.32</u>

HST#136600752RT0001

A. FARBER &amp; PARTNERS INC.

WAXMAN REALTY CORP.

## SUMMARY OF TIME INCURRED AUGUST 01, 2018 TO AUGUST 17, 2018

Name	Total Hours	Rate Per Hour	Billing
H. Levy	3.00	\$595.00	\$1,785.00
P. Denton	12.00	\$550.00	\$6,600.00
N. Litwack	1.40	\$425.00	\$595.00
A. Binelli	1.90	\$200.00	\$380.00
I. Lloyd-Key	0.40	\$200.00	\$80.00
L. Blunda	0.20	\$220.00	\$44.00
<b>Total</b>	<b>18.90</b>		<b>\$9,484.00</b>

**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

December 19, 2018

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 15233

---

**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of July 26, 2018 to August 31, 2018:**

DATE	SERVICE	STAFF
07/26/2018	Consulting fees - Corporate Review of draft court documents from Aird & Berlis; Review of various emails between A&B, McMillans regarding APA and Vesting Order	Levy
07/27/2018	Consulting fees - Corporate Review of the draft Receiver Report and related documents; Review of draft email to A&B with comments	Levy
07/30/2018	Consulting fees - Corporate Review of draft Orders and finalizing draft Receiver Report	Levy
07/31/2018	Consulting fees - Corporate Working on the Court Report, Affidavit of Fees; liaison with Aird Berlis; review of e-mails	Denton
07/31/2018	Consulting fees - Corporate Numerous emails regarding the court materials and correspondence with McMillan	Levy
08/20/2018	Consulting fees - Corporate Follow up of closing matters from Aug 17; coordinate wire of cash closing proceeds from Aird Berlis to Farber; coordinate payment of fees approved Aug 16; receipt and review of draft financials and tax workpapers for WRCI and 134 from BDFP; review with NL; reach out to Vern Pinto to arrange a follow up call	Denton
08/20/2018	Consulting fees - Corporate Reviewed draft financials and tax information provided by accountants for the companies; memo to P Denton regarding same	Litwack

# FARBER

08/20/2018	Banking - Corporate Banking, posting	Samoilov
08/21/2018	Consulting fees - Corporate Work on framework for separate receiverships WRCI and 134; review and discuss with LS; follow up closing books and HST Indemnity from AIM re: closing of Stalking Horse deal; coordinate payment of legal fees approved August 16; undertake call with VP of BDFP to review queries re: 2015 financials for WRCI and 134	Denton
08/21/2018	Banking - Corporate Banking, posting	Samoilov
08/22/2018	Consulting fees - Corporate Review of BDFP e-mails to AIM re: fiscal 2016 and 2017; coordinate provision of appraisals to AIM; work further on the protocol for allocation of costs in the respective receiverships of WRCI and 134	Denton
08/22/2018	Banking - Corporate Banking, posting	Samoilov
08/23/2018	Consulting fees - Corporate Follow up closing matters, specifically the HST indemnity; review of matters with NL re: accounting framework, protocol	Denton
08/23/2018	Consulting fees - Corporate Call with CRA regarding tax and lien issues; memo regarding same	Litwack
08/23/2018	Banking - Corporate Banking	Samoilov
08/24/2018	Consulting fees - Corporate Follow up with CRA regarding tax and lien issues; reviewed request to complete audit and trust exam going back to 2012; for follow up next month on completion of returns	Litwack
08/27/2018	Consulting fees - Corporate Review of Waxman post-closing matters	Denton
08/28/2018	Consulting fees - Corporate Review the overall status of the receivership; review and evaluate the protocol going forward for the individual Debtor entities; draft and provide e-mail to Aird Berlis re discussion topics and next steps	Denton



# FARBER

08/28/2018 Consulting fees - Corporate Levy  
 review of emails with Jeremy Nemers and Paul Denton  
 regarding status update

	Total for Services	\$ 9,930.00
Expenses: Photocopies, faxes, etc.	Total for Expenses	<u>121.80</u>
	Subtotal	10,051.80
	HST	<u>1,290.90</u>
	Current Amount Due	<u>\$ 11,342.70</u>

HST#136800752RT0001

A. FARBER & PARTNERS INC.

WAXMAN REALTY CORP.

## SUMMARY OF TIME INCURRED

JULY 26, 2018 TO AUGUST 28, 2018

Name	Total Hours	Rate Per Hour	Billing
H. Levy	5.50	\$595.00	\$3,272.50
P. Denton	9.60	\$550.00	\$5,280.00
N. Litwack	1.50	\$425.00	\$637.50
L. Samoilov	3.70	\$200.00	\$740.00
<b>Total</b>	<b>20.30</b>		<b>\$9,930.00</b>

**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

January 19, 2019

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 15361

---

**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of September 4, 2018 to December 31, 2018:**

<b>DATE</b>	<b>SERVICE</b>	<b>STAFF</b>
09/04/2018	Consulting fees - Corporate Review of e-mails; coordinate follow up meeting re: potential litigation claims against funds held; review status of items.	Denton
09/05/2018	Consulting fees - Corporate Preparation for and attend meeting at Aird Berlis to review approach to claims process and resolution of contingent litigation claims against the debtors; review of correspondence from Crawley MacKewn Brush dated July 31.	Denton
09/05/2018	Consulting fees - Corporate Meeting with Steve Graff, Jeremy Nemers, Wael Rostom, Rob Brush and Clarke Tedesco regarding claims process, court process.	Levy
09/14/2018	Banking - Corporate Filing HST return for the period ending Aug 31, 2018.	Samoilov
09/17/2018	Consulting fees - Corporate Discussions with Paul Denton, Steve Graff and Jeremy Nemers.	Levy
09/20/2018	Banking - Corporate Bank reconciliation for August 2018.	Lloyd-Key
09/21/2018	Consulting fees - Corporate Liaise with Aird Berlis on litigation, next steps; review discuss repayment of Receivers borrowings.	Denton

# FARBER

09/25/2018	Consulting fees - Corporate Update discussion with Paul Denton.	Levy
09/25/2018	Consulting fees - Corporate Document processing.	Smith
09/26/2018	Consulting fees - Corporate Document Processing.	Smith
09/26/2018	Banking - Corporate Bank reconcillation for August 2018.	Lloyd-Key
10/03/2018	Consulting fees - Corporate Update fee analysis in advance of review of fee sharing arrangements among AIM and the debtors/ Waxman; liaise with Wael Rostom on same.	Denton
10/04/2018	Consulting fees - Corporate Receipt and commence review of financial statements provided by BDFP for 134 and WRCI.	Denton
10/04/2018	Consulting fees - Corporate Follow up on the status of the discussions between Waxman groups re: litigation.	Levy
10/05/2018	Consulting fees - Corporate Review of 134 and WRCI 2016 and 2017 draft financials; review and set out fee summary for AIM, WRCI and 134 contribution assessment.	Denton
10/12/2018	Consulting fees - Corporate Call with Jeremy Waxman; assist AIM with Altus contact; liaise with Wael Rostom re: fees; update chart for review with McMillan and AIM.	Denton
10/15/2018	Consulting fees - Corporate Work on fee analysis re: contribution to fees provided for the AIM Waxman forbearance agreement; draft and send e-mail to W Rostom of McMillans.	Denton
10/16/2018	Consulting fees - Corporate Review of e-mail from W Rostom; follow up the CRA and accounting matters and status.	Denton
10/18/2018	Consulting fees - Corporate Reviewed parcel registers and correspondence from CRA regarding secured claims; emails with P Denton regarding same.	Litwack
10/18/2018	Banking - Corporate Filing HST return for the period ending Sep 30, 2018. Phone call to CRA re. status of RT1 and RC1 accounts. E-mail to P. Denton re. the same.	Samollov

# FARBER

- 10/19/2018 Consulting fees - Corporate Denton  
Receipt and Review of updated financial statements for WRCI and 134 from BDFP; review of CRA matters and liaise with BDFC; responding to information (calls and e-mails) requests from Jeremy Waxman through the week of Oct 19.
- 10/19/2018 Banking - Corporate Samoilov  
Banking, posting.
- 10/22/2018 Consulting fees - Corporate Denton  
Review of e-mail from V Pinto re: CRA matters.
- 10/24/2018 Consulting fees - Corporate Levy  
Review of correspondence from McMillans regarding AIM claim in the receivership estate.
- 10/25/2018 Consulting fees - Corporate Denton  
Review of correspondence from AIM re: claims against WRCI and 134 related to rent adjustments on two properties that were not reflected in stalking horse transaction; follow up with AIM VP of Finance Sylvain Guenette.
- 10/25/2018 Banking - Corporate Lloyd-Key  
Bank reconciliation for September 2018.
- 10/29/2018 Consulting fees - Corporate Denton  
Review of e-mail from Vernon Pinto; review of fee invoices; coordinate information gathering for Fiscal 2018 financials.
- 10/31/2018 Consulting fees - Corporate Denton  
Liaise with Sylvain Guenette on AIM claims related to WRCI and 1340923 which were not provided for in the stalking horse transaction; receipt and review of CRA HST notice and forward to BDFP to address; review of BDFP invoices provided for WRCI and 1340923 and coordinate for payment.
- 10/31/2018 Banking - Corporate Samoilov  
Phone call from CRA re. HST audit; discuss with P. Denton re. the same.
- 11/01/2018 Consulting fees - Corporate Denton  
attending the accounting matters for Fiscal 2018 for each of WRCI and 1340923; coordinate updated interim statement of receipts and disbursement for the receivership activity through until August 31, 2018; gather supporting documents on the stalking horse transaction and the closing of same; draft e-mail and forward information to BDFP.

# FARBER

11/01/2018	Banking - Corporate	Samoilov	Update R&D report for Aug 31,2018.
11/02/2018	Consulting fees - Corporate	Levy	Numerous discussions with Paul Denton regarding status update.
11/05/2018	Consulting fees - Corporate	Denton	Receipt and review of 2018 engagement letters for each of WRCl and 1340923; request fee estimate for same; coordinate approval and payment of BDFP fees invoices for each of WRCl and 1340923 work on 2015-2017 financial statements as well as corporate tax and HST filing updates.
11/05/2018	Banking - Corporate	Samoilov	1340923 Ont. Inc. - prepare and forward to CRA request to open HST BN and to process authorization letter. Banking, posting.
11/06/2018	Consulting fees - Corporate	Denton	Follow up fiscal 2018 matters with LS and November 1 e-mail transmitting documents to BDFP in support of fiscal 2018 preparation; revise the interim statement of receipts and disbursement to August 31, 2018 regarding disclosure items and send to BDFP.
11/07/2018	Consulting fees - Corporate	Denton	Review of matters with LS; review of e-mail from BDFP re: 5 information requests re: fiscal 2018.
11/07/2018	Banking - Corporate	Samoilov	Review e-mail from BDFP re. corporate tax filing. Discuss with P. Denton re. the same.
11/08/2018	Consulting fees - Corporate	Denton	Review of information request from BDFP re: 2018 financial statement preparation for each of WRCl and 134; review of matters internally with LS; liaise with legal counsel Aird Berlis to gather some of the information requested; review agreement of purchase and sale re: HST and purchase price allocation; exchange of e-mails with BDFP; coordinate call with Vern Pinto for November 9 regarding the approach to fiscal 2018.
11/08/2018	Banking - Corporate	Samoilov	Banking.
11/09/2018	Consulting fees - Personal	Denton	Preparation for and participate on call with V Pinto of BDFP re: 2018 fiscal acctg.

## FARBER

11/13/2018	Consulting fees - Corporate	Denton
	Review of correspondence from Bennett Jones re: NASG claim related to the Morris Waxman estate litigation; liaise with Aird & Berlis on same; follow up HST filing with LS.	
11/14/2018	Banking - Corporate	Lloyd-Key
	Bank reconciliation for October 2018.	
11/16/2018	Consulting fees - Corporate	Denton
	Review of the HST matters with Lidia; send particulars of outstanding HST return to BDFP; review and respond to e-mail from BDFP; field calls from Jeremy Waxman.	
11/16/2018	Banking - Corporate	Samoilov
	Filing HST return for the period ending Oct 31, 2018.	
11/16/2018	Banking - Corporate	Samoilov
	Review HST file; phone call to CRA re. overdue HST return; e-mail to P. Denton re. the same.	
11/19/2018	Consulting fees - Corporate	Binelli
	Receive telephone call from CRA.	
11/20/2018	Consulting fees - Corporate	Denton
	Attend to request from Aird Berlis to confirm trust account funds to Aaron and Jeremy Waxman legal counsel Scarfone Hawkins; follow up status of discussions with the two litigation claims and the next steps.	
11/20/2018	Banking - Corporate	Samoilov
	Banking, posting; provide estates' banking accounting information to external accountant.	
11/21/2018	Consulting fees - Corporate	Binelli
	Document production.	
11/21/2018	Consulting fees - Corporate	Denton
	Respond to e-mail from BDFP regarding fiscal 2018 including providing copies of appraisals; liaise with Jeremy Nemers of Aird & Berlis regarding the status of the negotiations with the two litigation claimant parties (NASG and the Waxman Family Trust); follow up and provide financial statements to highlight fact other liabilities remain to be dealt with.	
11/22/2018	Consulting fees - Corporate	Denton
	Review e-mail and coordinate responses to Rebecca Stinson BDFP re fiscal 2018 including UST returns.	
11/23/2018	Consulting fees - Corporate	Binelli
	Document revision.	

# FARBER

11/23/2018	Consulting fees - Corporate	Denton	Review of Jeremy Waxman information request; coordinate turn of letter and send to Jeremy Waxman.
11/26/2018	Consulting fees - Corporate	Levy	Numerous discussions with Paul Denton, Aird & Berlis; Review of correspondence from Scarfone Hawkins.
11/27/2018	Consulting fees - Corporate	Denton	Review of correspondence from Lax O'Sullivan legal counsel for NASG; review of that matter with legal counsel Aird Berlis; draft and provide e-mail to W Rostom of McMillan re: overall fees and related burden contribution arrangement under forbearance, as well as the additional claims filed by AIM against each of WRCI and 134; review of e-mails from BDFP regarding treatment of fiscal 2018 financials and related allocations including HST.
11/27/2018	Banking - Corporate	Samoilov	Review e-mail exchange with the external accountant re. corporate tax filing. Discuss re. the same with P. Denton.
11/28/2018	Consulting fees - Corporate	Denton	Coordinate review and payment of professional fees; review follow up query for information from Jeremy Waxman re: RECO application.
11/28/2018	Banking - Corporate	Samoilov	Banking, posting.
11/29/2018	Consulting fees - Corporate	Denton	Review of R Stintson e-mail update re: CRA review of corporate tax and HST 2015-2017; review of notice from CRA re: HST examination of WRCI; forward to BDFP for Actioning.
12/03/2018	Consulting fees - Corporate	Levy	Discussions with Steve Graff and Paul Denton regarding upcoming Hearing.
12/04/2018	Consulting fees - Corporate	Denton	Call with Steve Graf of Aird Berlis to review Receiver position at upcoming scheduling hearing on Dec 7; draft e-mail with various outstanding claims to facilitate review and discussion with AIM and debtors, accountants BDFP; send to AIM; review of BDFP e-mail setting out CRA HST claims; review of attachments.
12/05/2018	Consulting fees - Corporate	Denton	Review of e-mails ;call with Sylvain Guenette of AIM to

# FARBER

review summary of claims being made; being reviewed by debtors and their accountants; call with BDFP on various claims from/to AIM and review in general timelines to completion of fiscal 2018 financials.

12/06/2018	Consulting fees - Corporate	Denton	Review of Jeremy Waxman e-mail; coordinate section 246 reporting for each of the debtor entities; fielded call from Aaron Waman.
12/06/2018	Banking - Corporate	Samoilov	Prepare R&D report for Nov 30, 2018.
12/07/2018	Consulting fees - Corporate	Denton	Attend court re: efforts to schedule for summary motions, hearings; review of matters with various counsel at court.
12/07/2018	Consulting fees - Corporate	Levy	Update from Paul Denton and Steve Graff on the court Motion.
12/10/2018	Consulting fees - Corporate	Denton	Attend to information request for Jeremy Waxman re: RECO and draft e-mail and forward to same; coordinate update of interim SRD to support BIA section 246(2) reporting for each of WRCl and 1340923; review status of HST audit.
12/11/2018	Consulting fees - Corporate	Binelli	Document production.
12/11/2018	Banking - Corporate	Lloyd-Key	Bank reconciliation for November 2018.
12/12/2018	Consulting fees - Corporate	Binelli	Document production/revisions, s.246 reports.
12/13/2018	Consulting fees - Corporate	Denton	Draft of each s. 246(2) reports for WRCl and 1340923; review of Interim statement of receipts and disbursement; follow up HST return to June 5, 2018 with BDFP.
12/13/2018	Banking - Corporate	Samoilov	Filing HST return for the period ending Nov 30, 2018; phone call to CRA re. status of HST refund.
12/14/2018	Consulting fees - Corporate	Denton	Review and finalize BIA S.246(2) reporting for each of WRCl and 1340923 including review of matters with LS; review and respond to e-mail from BDFP re: HST audit related enquiries.



# FARBER

12/19/2018	Consulting fees - Corporate Document production.	Binelli
12/21/2018	Consulting fees - Corporate Finalize documentation.	Binelli
12/21/2018	Banking - Corporate Banking.	Samollov
12/27/2018	Banking - Corporate Banking, posting.	Samollov

	Total for Services	\$ 24,942.50
Expenses: Photocopies, faxes, etc.	Total for Expenses	<u>316.80</u>
	Subtotal	25,259.30
	HST	<u>3,242.53</u>
	Current Amount Due	<u>\$ 28,501.83</u>

HST#136800752RT0001

A. FARBER & PARTNERS INC.

WAXMAN REALTY CORP.

## SUMMARY OF TIME INCURRED

SEPTEMBER 4, 2018 TO DECEMBER 31, 2018

Name	Total Hours	Rate Per Hour	Billing
H. Levy	7.50	\$595.00	\$4,462.50
P. Denton	32.50	\$550.00	\$17,875.00
N. Litwack	0.20	\$425.00	\$85.00
A. Binelli	2.60	\$200.00	\$520.00
L. Lloyd-Key	1.20	\$200.00	\$240.00
L. Samollov	8.40	\$200.00	\$1,680.00
F. Smith	0.40	\$200.00	\$80.00
<b>Total</b>	<b>52.80</b>		<b>\$24,942.50</b>

**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

April 22, 2019

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 15699

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**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of January 1, 2019 to March 31, 2019:**

DATE	SERVICE	STAFF
01/07/2019	Consulting fees - Corporate Review of e-mail from BDFP re: outstanding claims and issues between debtors and AIM; draft and forward e-mail to Sylvain Guenette of AIM in effort to get resolution; review of CRA claims status and potential HST refunds	Denton
01/08/2019	Consulting fees - Corporate Follow up Aird & Berlis re; next steps; court hearing date was scheduled for Jan 17; review of CRA matters	Denton
01/08/2019	Consulting fees - Corporate Emails from Steve Graff and Paul Denton; Updates with Paul Denton	Levy
01/10/2019	Consulting fees - Corporate Review of e-mail from A Waxman; follow up Sylvain Guenette of AIM on the status of 4 claims issues	Denton
01/11/2019	Consulting fees - Corporate Review of response from AIM on 4 claims; draft and provide response to BDFP on 3 of the claims including fee allocation; follow up AIM position on HST input tax credit issue (\$83k).	Denton
01/14/2019	Consulting fees - Corporate Follow up outstanding issues with AIM specifically HST; forward to BDFP;	Denton
01/15/2019	Consulting fees - Corporate Review of e-mails from Aird & Berlis and Scarfone Hawkins re; current disposition of companies and claims; draft and provide response	Denton

# FARBER

01/16/2019	Consulting fees - Corporate	Denton	Review of e-mail and liaise with legal counsel re: attendance at court and scheduling of February 2019 hearing; follow up HST status re: filing of returns to June 5, 2018
01/16/2019	Consulting fees - Corporate	Levy	Review of emails and court documents
01/18/2019	Consulting fees - Corporate	Levy	Follow up discussions with Paul Denton and review of correspondence from Aird & Berlis
01/18/2019	Banking - Corporate	Samollov	Filing HST return for the period ending Dec 31, 2018; phone call to CRA re. status of business account; e-mail to p. Denton following up on outstanding HST return for Jun 05, 2018.
01/21/2019	Consulting fees - Corporate	Denton	Review of HST status with LS; liaise with V Pinto of BDFP to confirm status of HST returns to June 5, 2018 receivership date; liaise with legal counsel on NASG litigation claim next steps
01/22/2019	Banking - Corporate	Samollov	1340923 - Filing HST return for the period ending Dec 31, 2018.
01/24/2019	Banking - Corporate	Samollov	1340923 - review e-mail from R. Stinson and approved HST return. e-mail to P. Denton re, the same.
01/25/2019	Consulting fees - Corporate	Denton	Review of information request from Matt Moloci; liaise with Aird Berlis and internally to gather information, Invoiced fees and WIP; in addition, prepare a snapshot of cash position and adjustments to same;
01/25/2019	Consulting fees - Corporate	Binelli	Document production.
01/25/2019	Banking - Corporate	Samollov	1340923 - phone call to CRA re. status of business accounts and HST on-line access code; e-mail to R. Stinson from BDFP re. the same; filing R11 HST returns for the periods ending June 05, 2018 and Dec 31, 2018. Update R&D for Dec 31, 2018. Scan backup documents for the payment to Aird & Berlis.
01/28/2019	Consulting fees - Corporate	Denton	Complete compilation of fee position as well as trust funds; provide draft to Aird & Berlis and review, discuss; send e-mail to Waxman legal counsel Matt Moloci Scarfone Hawkins; follow up correspondence with Aird & Berlis

# FARBER

01/28/2019	Consulting fees - Corporate	Levy
	Call with Paul Denton regarding Matt Moloci request and review of emails to Aird & Berlis	
01/29/2019	Banking - Corporate	Lloyd-Key
	Bank reconciliation for December 2018.	
01/29/2019	Banking - Corporate	Samoilov
	Banking, posting.	
02/01/2019	Consulting fees - Corporate	Denton
	Review of materials served by Scarfone Hawkins	
02/01/2019	Consulting fees - Corporate	Levy
	Review of emails from Adam Wygodny, Niklas Holmberg and Aird & Berlis	
02/04/2019	Consulting fees - Corporate	Denton
	Review of e-mails and motion record served by Scarfone Hawkins regarding various relief sought for Feb 14 scheduled hearing	
02/04/2019	Consulting fees - Corporate	Levy
	Review of motion materials prepared by Scarfone Hawkins	
02/05/2019	Consulting fees - Corporate	Denton
	Review of e-mails re: NASG matter	
02/07/2019	Consulting fees - Corporate	Denton
	Review of e-mails re: Feb 14 hearing and relief being sought by Scarfone Hawkins for Waxmans and debtor entities Feb 14	
02/11/2019	Consulting fees - Corporate	Denton
	Review of e-mails among legal counsel; call with Jeremy Nemers AB to review receivership status and receiver perspective for matter being heard Feb 14	
02/11/2019	Banking - Corporate	Samoilov
	Banking, posting.	
02/12/2019	Consulting fees - Corporate	Denton
	Review of case conference e-mails; liaise with BDFP re: CRA claims resolution and status of 2018 financial statements	
02/13/2019	Consulting fees - Corporate	Levy
	Review of various emails and case conference materials from Matt Moloci, Niklas Holmberg and Christine Hutton	
02/13/2019	Consulting fees - Corporate	Denton
	Review of Case Conference materials from NASG and Waxman legal counsel; with respect to the case	

# FARBER

conference liaise with BDFP regarding the latest status of the CRA review and claims and status of 201 financial statements; review of draft 2017 FS for each debtor entity; follow up HS refunds post receivership

02/13/2019	Banking - Corporate Banking.	Samoilov
02/13/2019	Banking - Corporate Bank reconciliation for January 2019.	Lloyd-Key
02/14/2019	Consulting fees - Corporate Update from Paul Denton on case conference	Levy
02/14/2019	Consulting fees - Corporate Prep and attendance at court 10:30; matter not heard until 2:20 re: case conference; completed around 3 return to office 3:30 during that time review of a number of matters with legal counsel	Denton
02/15/2019	Consulting fees - Corporate Review of draft endorsement; draft and provide e-mail to AIM and its legal counsel re: 4 claims issues and final disposition; rental losses; rooftop FIT rental contract; HST input tax disallowance and reimbursement of fees	Denton
02/15/2019	Banking - Corporate Banking, posting.	Samoilov
02/20/2019	Consulting fees - Corporate Review of e-mails from legal counsel and motion record for next court attendant; review of 2nd report outline	Denton
02/20/2019	Banking - Corporate Review e-mail from R. Stinson; forward to R. Stinson the copies of HST returns filed for RT1 and RT2 accounts.	Samoilov
02/21/2019	Consulting fees - Corporate Review of e-mails from Aird Berlis; review of CRA status re: HST refunds	Denton
02/21/2019	Banking - Corporate Filing HST return for the period ending Jan 31, 2019; phone call to CRA re. status of RT1 and RC1 accounts and following up HST refund.	Samoilov
02/22/2019	Consulting fees - Corporate Review of draft materials provided by Aird Berlis for proposed 2nd report; drafting of 2nd report	Denton
02/25/2019	Banking - Corporate Banking.	Samoilov

# FARBER

02/26/2019	Consulting fees - Corporate	Denton
	Receipt and review of draft FS for 2018 for WRCI and 1340923; draft and provide e-mail to V Pinto; review of responses to same	
02/26/2019	Banking - Corporate	Samoilov
	Phone call from HST auditor.	
02/27/2019	Consulting fees - Corporate	Denton
	Review of draft financial statements provided by BDFP for WRCI and 1340923 for fiscal 2018; end e-mail response to V Pinto on FS with several queries; review of appropriateness of payment requests to CRA; liaise with Aird Berlis; follow up on outstanding AIM issues;	
02/27/2019	Banking - Corporate	Samoilov
	E-mail to R. Stinson from BDF re, RT0001 HST audit for Sep 01 - Jun 05, 2018; prepare and forward to CRA supporting documentation for HST return filed for RT1 account and HST returns filed for RT2 account for the period Nov 01 - Dec 31, 2018.	
02/28/2019	Consulting fees - Corporate	Denton
	Review of e-mails from AIM confirming claims issues resolved; review of next steps to receive \$82k of funds from AIM for fee contribution pursuant to forbearance agreement; ; review of BDFP invoices for each debtor companies financial; liaise with Aird Berlis on need for court approval for distributions at this point re: CRA or other payments; draft response to Waxman and BDFP regarding same	
03/01/2019	Consulting fees - Corporate	Denton
	Finalize and send e-mail to Waxmans and BDFP re: no payment of CRA at this time without an order; approve payment of BDFP fees	
03/01/2019	Banking - Corporate	Samoilov
	Banking, posting.	
03/07/2019	Consulting fees - Corporate	Denton
	Follow up enquiry from CRA; receipt and review of e-mail from BDFP with corporate tax and HST liabilities for each debtor	
03/07/2019	Consulting fees - Corporate	Binelli
	Receive telephone call from CRA representative.	
03/07/2019	Banking - Corporate	Samoilov
	Banking, posting.	
03/08/2019	Consulting fees - Corporate	Levy
	Various discussions with Paul Denton throughout the past week regarding CRA, discharge, NASG motion	

# FARBER

03/11/2019	Consulting fees - Corporate Receive call from Aaron Waxman re NASG settlement. Provide update to Aird Berlis	Denton
03/12/2019	Consulting fees - Corporate Review of email from Jeremy. Call with Jeremy. Schedule call for March 13 re bring forward court hearing; provide BDFP tax summary to JN	Denton
03/12/2019	Banking - Corporate Banking, posting.	Samoilov
03/12/2019	Banking - Corporate Bank reconciliation for February 2019.	Lloyd-Key
03/13/2019	Consulting fees - Corporate Attend 10:00 call with M Moloci Jeremy Nemers re next steps distribution and final matters discharge; follow up with legal counsel	Denton
03/14/2019	Consulting fees - Corporate Update HL on next steps and potential NASG settlement. Review email from M Moloci in follow up to call yesterday.	Denton
03/15/2019	Banking - Corporate Filing HST return for the period ending Feb 28, 2019; review RC1 notice of assessment; e-mail to P. Denton re. Notice of assessment and RT1 and RC1 liabilities.	Samoilov
03/19/2019	Consulting fees - Corporate Email correspondence with Jeremy Nemers and Matt Moloci	Levy
03/20/2019	Consulting fees - Corporate Attend in Court for 9:30 chambers appointment and follow up discussions with Matt Moloci; Call with Jeremy Nemers; Call with Aaron Waxman	Levy
03/23/2019	Consulting fees - Corporate Review of e-mails and liaising with legal counsel over the period March 15 to 22	Denton
03/25/2019	Consulting fees - Corporate Review of update of court attendance last week, March 19; review of materials and e-mails from Debtors legal counsel Scarfone Hawkins	Denton
03/25/2019	Consulting fees - Corporate Document production.	Binelli
03/28/2019	Consulting fees - Corporate Advance 2nd report; review of various Scarfone Hawkins motion material regarding relief sought including payment of surplus funds into trust	Denton

# FARBER

03/29/2019 Consulting fees - Corporate Denton  
Work and 2nd report and affidavit

03/31/2019 Consulting fees - Corporate Denton  
Fee affidavit drafting for final report

Expenses: Photocopies, faxes, etc.	Total for Services	\$ 24,465.00
	Total for Expenses	<u>303.00</u>
	Subtotal	24,768.00
	HST	<u>3,180.45</u>
	Current Amount Due	\$ <u>27,948.45</u>

HST#136800752RT0001

A. FARBER &amp; PARTNERS INC.

WAXMAN REALTY CORP.

## SUMMARY OF TIME INCURRED

JANUARY 1, 2019 TO MARCH 31, 2019

Name	Total Hours	Rate Per Hour	Billing
H. Levy	12.00	\$595.00	\$7,140.00
P. Denton	27.50	\$550.00	\$15,125.00
A. Binelli	1.20	\$200.00	\$240.00
L. Lloyd-Key	0.60	\$200.00	\$120.00
L. Samollov	9.20	\$200.00	\$1,840.00
<b>Total</b>	<b>50.50</b>		<b>\$24,465.00</b>



**FARBER**

150 York Street, Suite 1600  
 Toronto, ON, Canada, M5H 3S5  
 T: 1.855.775.8777  
 F: 416.496.3839

May 6, 2019

Waxman Realty Corp.  
 & 1340923 Ontario Inc.  
 c/o 4-4350 Harvester Road  
 Burlington, ON L7L 5S4

Invoice No. 15756

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**TO PROFESSIONAL SERVICES RENDERED BY A. FARBER & PARTNERS INC. for the period of April 1, 2019 to April 30, 2019:**

DATE	SERVICE	STAFF
04/01/2019	Consulting fees - Corporate Advance 2nd report; update draft affidavit	Denton
04/01/2019	Banking - Corporate 1340923 - review and forward to P. Denton an RC0001 Notice of Assessment for the tax return filed for Aug 31, 2018.	Samoilov
04/08/2019	Consulting fees - Corporate Review BDFP summary tax position	Denton
04/10/2019	Consulting fees - Corporate Review of J Nemers turn of 2nd report	Denton
04/10/2019	Banking - Corporate Banking, posting.	Samoilov
04/10/2019	Banking - Corporate Bank reconciliation for March 2019.	Lloyd-Key
04/11/2019	Consulting fees - Corporate Exchange of e-mails with J Nemers re: timetable for reporting and Waxman litigation party's status and timing of their motions to among other matters have Receiver distribute surplus funds to legal trust account	Denton
04/14/2019	Consulting fees - Corporate Further review of turn of report and coordinate with legal counsel as to call during week of April 15;	Denton
04/16/2019	Consulting fees - Corporate Review of 2nd draft report; review of e-mail from J Nemers of Aird Berlis; call with JN re: recent discussions with M Moloci vis-a-vis court timetable and	Denton

# FARBER

motions between litigating parties; review steps for completion of 2nd report and timing of same

04/16/2019	Consulting fees - Corporate	Levy
	Review of emails from Paul Denton and Jeremy Nemers regarding Moloci call	
04/17/2019	Banking - Corporate	Samollov
	Phone call from CRA re. HST audit for RT1 and RT2 accounts; review documents already submitted to CRA; return a phone call to CRA auditor re. the same. Filing HST return for the period ending Mar 31, 2019.	
04/22/2019	Consulting fees - Corporate	Denton
	Coordinate forwarding of receiver and counsel invoices to M Molocci	
04/22/2019	Consulting fees - Corporate	Schmidt
	Document preparation.	
04/24/2019	Consulting fees - Corporate	Levy
	Review of the endorsement from Justice Hainey and email from Matt Moloci	
04/24/2019	Consulting fees - Corporate	Denton
	Review of e-mail from Scarfone Hawkins re: 9:30 hearing in morning re; court scheduling (May 28 Court date)	
04/24/2019	Consulting fees - Corporate	Binelli
	Prepare Fee Affidavit Schedule.	
04/26/2019	Consulting fees - Corporate	Denton
	Review of fee affidavit and report turn (2nd);	
04/26/2019	Banking - Corporate	Samollov
	Prepare interest calculation for Receiver's Certificate.	
04/29/2019	Consulting fees - Corporate	Denton
	Undertake call with J Nemers re: feedback from April 24 hearing and Receiver next steps; forward draft of 2nd report to J Nemers	

	Total for Services	\$ 3,080.00
Expenses: Photocopies, faxes, etc.	Total for Expenses	<u>48.00</u>
	Subtotal	3,128.00
	HST	<u>400.40</u>
	Current Amount Due	<u>\$ 3,528.40</u>

HST#136800752RT0001

# FARBER

A. FARBER & PARTNERS INC.

WAXMAN REALTY CORP.

SUMMARY OF TIME INCURRED

APRIL 1, 2019 TO APRIL 30, 2019

Name	Total Hours	Rate Per Hour	Billing
H. Levy	1.00	\$595.00	\$595.00
P. Denton	3.10	\$550.00	\$1,705.00
A. Binelli	0.70	\$200.00	\$140.00
L. Lloyd-Key	0.30	\$200.00	\$60.00
L. Samoilov	2.00	\$200.00	\$400.00
G. Schmidt	0.90	\$200.00	\$180.00
<b>Total</b>	<b>8.00</b>		<b>\$3,080.00</b>

AMERICAN IRON & METAL COMPANY INC.  
Applicant

- and -

1340923 ONTARIO INC. and WAXMAN REALTY COMPANY INC.  
Respondents

Court File No. CV-18-59557-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

AFFIDAVIT OF PAUL J. DENTON

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: 416-865-7043  
Fax: 416-865-7048

Lawyers for Applicant

2020

# TAB 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 IAN AVERSA  
(sworn May 7, 2019)**

I, **IAN AVERSA**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY AS FOLLOWS:**

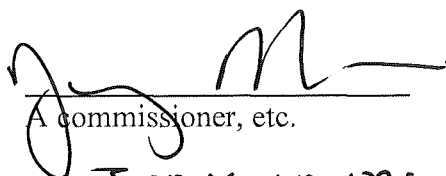
1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for A. Farber & Partners Inc., in its capacity as the court-appointed receiver of 1340923 Ontario Inc. and Waxman Realty Company Inc. (in such capacity, 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 September 26, 2018 in the amount of \$17,564.96 in respect of the period from July 31, 2018 to August 19, 2018;

- (b) an account dated September 26, 2018 in the amount of \$3,602.47 in respect of the period from August 20, 2018 to September 23, 2018;
- (c) an account dated November 28, 2018 in the amount of \$4,237.51 in respect of the period from September 24, 2018 to November 28, 2018;
- (d) an account dated December 31, 2018 in the amount of \$3,395.09 in respect of the period from November 26, 2018 to December 31, 2018;
- (e) an account dated March 18, 2019 in the amount of \$8,757.50 in respect of the period from January 7, 2019 to February 28, 2019;
- (f) an account dated April 22, 2019 in the amount of \$4,293.44 in respect of the period from March 1, 2019 to March 27, 2019; and
- (g) an account dated April 30, 2019 in the amount of \$4,787.81 in respect of the period from April 10, 2019 to April 30, 2019,

(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 \$457.97.

- 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 7<sup>th</sup> day of May, 2019 )

  
 A commissioner, etc.  
 JEREMY NEMETS

  
 IAN AVERSA

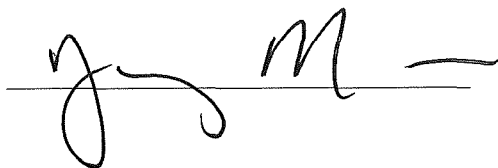
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 7<sup>th</sup> day of May, 2019

A handwritten signature in black ink, appearing to read "Jeremy Nemero", is written over a horizontal line.

Commissioner for taking Affidavits, etc

Jeremy Nemero



IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

224

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

Attention: Mr. Hylton Levy

**Account No.: 610995**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

September 26, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended August 19, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	31/07/18	\$795.00	0.20	\$159.00	Telephone call with C. Tedesco re claims process, if any
MGM	01/08/18	\$325.00	0.80	\$260.00	Telephone call with and receive instruction from J Nemers; Review e-reg documents (application for vesting order) and provide comments on same to D Dudkiewicz (McMillan) re same; Review draft vesting order
JTN	01/08/18	\$375.00	2.10	\$787.50	Email exchanges with purchaser's counsel and client; Receipt and review of draft real property registrations; Telephone calls and emails with M. McDonald and A. Gebert re same and related matters; Review and swear fee affidavit; Engaged with further drafting of BDC security opinion; Email to S. Graff re same; Update draft First Report
SLG	02/08/18	\$795.00	0.70	\$556.50	Review and revise security opinion
SLG	02/08/18	\$795.00	0.50	\$397.50	Telephone call with J. Nemers; review draft opinion; review email on Report

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	02/08/18	\$375.00	0.70	\$262.50	Telephone call with S. Graff re security opinion; Finalize and issue same; Email exchanges with working group re tomorrow's service of materials and related matters; Engaged with revisions to and finalization of First Report
JTN	03/08/18	\$375.00	0.30	\$112.50	Engaged with final review of motion record and arrange for service of same
JP	03/08/18	\$260.00	0.70	\$182.00	Pick up package from Farber for J. Nemers
SLG	04/08/18	\$795.00	0.20	\$159.00	Review issues with Report and BDC payout
AEG	07/08/18	\$325.00	0.30	\$97.50	Discussion with J. Nemers re receivership sale
JTN	07/08/18	\$375.00	0.30	\$112.50	Meeting with A. Gebert to discuss closing matters; Discussion with S. Graff re same
PW	07/08/18	\$180.00	0.60	\$108.00	Filed Motion Record at Commercial List
AEG	13/08/18	\$325.00	0.10	\$32.50	Email correspondence with Borrower's counsel
JTN	13/08/18	\$375.00	0.50	\$187.50	Telephone calls and email exchanges with P. Denton, S. Graff and A. Gebert re closing and related matters
AEG	14/08/18	\$325.00	0.50	\$162.50	Call with Purchaser's counsel; Email correspondence with M. McDonald and J. Nemers re real property registrations
MGM	14/08/18	\$325.00	0.40	\$130.00	Emails with J Nemers, A Gebert and S Graff re name of entity on title to subject lands; Email to D Dudkiewicz re registering Application Change Name - Owner to update registered title to reflect post-amalgamation name

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	14/08/18	\$375.00	0.30	\$112.50	Email exchanges with P. Denton, A. Gebert and M. McDonald
AEG	15/08/18	\$325.00	3.60	\$1,170.00	Discussion with J. Nemers; Engage in review of draft closing documents; Email correspondence and telephone call with Client re closing; Prepare materials for court attendance; Discussions with M. McDonald and J. Nemers re assumption of mortgage; Review of closing documents
SLG	15/08/18	\$795.00	2.30	\$1,828.50	Prepare to attend motion for approval and vesting and for ancillary relief
SLG	15/08/18	\$795.00	0.10	\$79.50	Telephone call with H. Levy
SLG	15/08/18	\$795.00	0.20	\$159.00	Telephone call with C. Tedesco and email with C. Tedesco
MGM	15/08/18	\$325.00	3.70	\$1,202.50	Review and revise forms of closing documents; Circulate comments on same; Draft closing documents which are Receiver's responsibility and circulate for comment; Follow up emails and telephone calls with Purchaser's counsel settling documents; Discussion with D Dudkiewicz re escrow arrangements and need for 3-way DRA in lieu of mortgage assumption agreement; Telephone calls with P LaForgia re statement of adjustments and notice to tenants; Emails with Paul Denton re statement of adjustment; Conference call with A Gebert and J Nemers re escrow arrangements and satisfaction that BDC debt will be resolved as part of AVO
JTN	15/08/18	\$375.00	0.70	\$262.50	Telephone calls and email exchanges with S. Graff, P. Denton, A. Gebert and M. McDonald re tomorrow's court attendance, Friday's closing and related matters
AEG	16/08/18	\$325.00	2.60	\$845.00	Email correspondence with Purchaser's counsel; Discussions with M. McDonald re closing

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					documents and statement of adjustments; Email correspondence with client; Prepare draft Direction re Funds; Discussions with J. Nemers and M. McDonald; Prepare signature package
SLG	16/08/18	\$795.00	3.50	\$2,782.50	Prepare for and attend hearing to obtain order for approval and vesting and ancillary relief order; issue and circulate order
SLG	16/08/18	\$795.00	0.20	\$159.00	Discussion with A. Gebert re closing and assumption agreement
MGM	16/08/18	\$325.00	1.80	\$585.00	Attend to closing matters; Emails and telephone calls with Purchaser's counsel re closing documents, statement of adjustments and closing logistics; Discussions re acceptability of either DRA or Solicitor undertaking to comfort Receiver re discharge of BDC security; Draft outstanding documents; Conversations with A Gebert and J Nemers re outstanding items and potential risks with BDC Charge
JTN	16/08/18	\$375.00	0.20	\$75.00	Telephone calls and email exchanges with A. Gebert and M. McDonald re tomorrow's closing and today's hearing
AEG	17/08/18	\$325.00	2.50	\$812.50	Prepare for closing; Receipt and review of executed signature pages; Prepare executed closing documents; Email correspondence with Purchaser's counsel; Email correspondence with Client; Calls with Purchaser's counsel re outstanding items for closing
MGM	17/08/18	\$325.00	2.30	\$747.50	Attend to closing matters; Emails with Purchaser's counsel re exchange of closing deliveries; Confirm flow of funds; Follow up emails and calls with accounting re timing of wire; Provide comments on form of solicitors undertaking; Review revised DRA and confirm

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					acceptability; Review closing package for completeness; Review revisions to e-reg documents by Purchaser's counsel and follow up re status of pre-approval from LRO; confirm receipt of funds, finalize receiver's certificate, and confirm closing to opposing counsel
JTN	17/08/18	\$375.00	0.50	\$187.50	Telephone calls and email exchanges with internal group re closing; Attend to related matters as needed
<b>TOTAL:</b>			33.40	\$14,715.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	7.90	\$795.00	\$6,280.50
Michael G. McDonald (MGM)	9.00	\$325.00	\$2,925.00
Jeremy T. Nemers (JTN)	5.60	\$375.00	\$2,100.00
John Pappas (JP)	0.70	\$260.00	\$182.00
Alyssa E. Gebert (AEG)	9.60	\$325.00	\$3,120.00
Patrick Williams (PW)	0.60	\$180.00	\$108.00

<b>OUR FEE</b>	\$14,715.50
HST at 13%	\$1,913.02

#### DISBURSEMENTS

#### COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application	\$160.00
Non Taxable Cash to UBD	\$17.50
<b>Total Agency Costs</b>	<b>\$177.50</b>

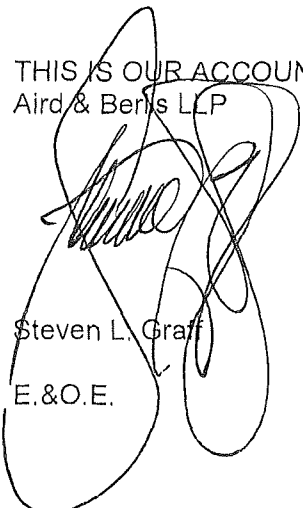
#### Subject to HST

Photocopies	\$310.25
Photocopies - Local	\$200.00
Imaging/Scanning	\$91.50
Binding and Tabs	\$30.50
Deliveries/Parss	\$39.38
<b>Total Disbursements</b>	<b>\$671.63</b>
HST at 13%	\$87.31

AMOUNT NOW DUE

\$17,564.96

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 1.5% 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.

33794578.1

IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

230

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

Attention: Mr. Hylton Levy

**Account No.: 611075**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

September 26, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 23, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
AEG	20/08/18	\$325.00	0.40	\$130.00	Email correspondence with client; Engage in review of post-closing discharges and report on same
MGM	20/08/18	\$325.00	0.40	\$130.00	Review and confirm acceptability of BDC discharges; Confirm to Purchaser's counsel
AEG	21/08/18	\$325.00	0.70	\$227.50	Email correspondence and call with Purchaser's counsel re HST Indemnity; Email correspondence and call with client re the same
JTN	21/08/18	\$375.00	0.30	\$112.50	Telephone call with A. Gebert re post-closing matters
AEG	23/08/18	\$325.00	0.40	\$130.00	Correspondence with Purchaser's counsel re post-closing matters; Review of executed original Closing Documents
JTN	28/08/18	\$375.00	0.10	\$37.50	Email exchange with P. Denton re next steps
SLG	05/09/18	\$795.00	2.00	\$1,590.00	Meeting with W. Rostom, J. Nemers and Farbers and Crawley McKeon and Brust reps; review docs in advance

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	05/09/18	\$375.00	1.60	\$600.00	Telephone call with S. Graff re today's meeting with working group; Attend at meeting with working group to discuss possible next steps
JTN	11/09/18	\$375.00	0.10	\$37.50	Voicemail exchange with P. Denton re next steps
JTN	12/09/18	\$375.00	0.10	\$37.50	Email exchange with P. Denton
JTN	21/09/18	\$375.00	0.20	\$75.00	Receipt and review of email from and telephone call with P. Denton re status and next steps
JTN	23/09/18	\$375.00	0.10	\$37.50	Email exchange with S. Graff re status update
<b>TOTAL:</b>			6.40	\$3,145.00	

Name	Hours	Rate	Value
Alyssa E. Gebert (AEG)	1.50	\$325.00	\$487.50
Michael G. McDonald (MGM)	0.40	\$325.00	\$130.00
Jeremy T. Nemers (JTN)	2.50	\$375.00	\$937.50
Steven L. Graff (SLG)	2.00	\$795.00	\$1,590.00

**OUR FEE** \$3,145.00  
HST at 13% \$408.85

**DISBURSEMENTS**

**COST INCURRED ON YOUR BEHALF AS AN AGENT**

Wire Charges \$15.00

**Subject to HST**

Photocopies - Local \$23.75  
Imaging/Scanning \$2.00  
Deliveries/Parss \$4.00

Total Disbursements \$29.75  
HST at 13% \$3.87

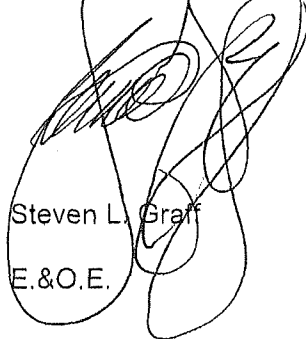
**AMOUNT NOW DUE**

**\$3,602.47**



THIS IS OUR ACCOUNT HEREIN

Aird & Berlis LLP



Steven L. Graf

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.

33800206.1

IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

457 003

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

Attention: Mr. Hylton Levy

**Account No.: 617243**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

November 28, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 28, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	24/09/18	\$375.00	0.10	\$37.50	Email to P. Denton
JTN	25/09/18	\$375.00	0.10	\$37.50	Email exchanges with P. Denton and S. Graff
SLG	03/10/18	\$795.00	0.50	\$397.50	Telephone call with M. Moloci re claims process and options and advancement
JTN	04/10/18	\$375.00	0.10	\$37.50	Telephone call and email exchange with S. Graff re next steps
JTN	11/10/18	\$375.00	0.40	\$150.00	Telephone call with S. Graff re next steps; Attend to related matters as needed
JTN	12/10/18	\$375.00	0.10	\$37.50	Receipt and review of status update email from S. Graff
SLG	15/10/18	\$795.00	0.50	\$397.50	Conference call with various counsel re approach, strategy and timing re NASG claim
JTN	15/10/18	\$375.00	0.60	\$225.00	Attend on conference call with M. Moloci, C. Tedesco, R. Brush, A. Waxman, J. Waxman and S. Graff; Post-conference call discussion with S. Graff
JTN	19/10/18	\$375.00	0.20	\$75.00	Email exchanges with S. Graff

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	22/10/18	\$795.00	0.20	\$159.00	Discussion with J. Nemers re methodology of dealing with NASG and other claims
JTN	22/10/18	\$375.00	0.20	\$75.00	Discussion with S. Graff re status; Email to working group re same
AEG	08/11/18	\$325.00	0.70	\$227.50	Review of closing documents and discussions with M. McDonald re the same; Correspondence with P. Denton; Call with P. Denton re the same
MGM	08/11/18	\$325.00	0.40	\$130.00	Review file and discussions with A Gebert to respond to HST and discharge inquiries from client
JTN	08/11/18	\$375.00	0.10	\$37.50	Email exchange and telephone call with A. Gebert re enquiry from client
SLG	13/11/18	\$795.00	0.10	\$79.50	Email re process
JTN	13/11/18	\$375.00	0.20	\$75.00	Receipt and review of letter from R. Swan; Email exchange with client re same
JTN	14/11/18	\$375.00	0.10	\$37.50	Voicemail exchange with P. Denton
SLG	16/11/18	\$795.00	0.10	\$79.50	Discussion with J. Nemers re meeting
SLG	20/11/18	\$795.00	0.40	\$318.00	Conference call re next steps towards distribution
JTN	20/11/18	\$375.00	1.10	\$412.50	Telephone call with P. Denton re status update; Telephone call with S. Graff re same; Receipt and review of enquiry from M. Moloci; Email to client re same; Attend on conference call organized by M. Moloci; Post-conference call discussion with S. Graff; Attend to related tasks as needed
SLG	21/11/18	\$795.00	0.40	\$318.00	Conference call with counsel for Waxman and consider adjudication of trust issue
JTN	21/11/18	\$375.00	0.40	\$150.00	Telephone call with P. Denton; Receipt and review of email from P. Denton
JTN	23/11/18	\$375.00	0.10	\$37.50	Receipt and review of letter from M. Moloci

TOTAL:	7.50	\$3,681.50
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OUR FEE	\$3,681.50
HST at 13%	\$478.60

**Subject to HST**

Teraview Search	\$68.50
HST at 13%	\$8.91

**\$4,237.51**

Steven L. Graff  
E.&O.E.

GST / HST Registration # 12184 6539 RT0001

34421777.1

IN ACCOUNT WITH:

**AIRD BERLIS**

326

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.: 621202**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

December 31, 2018

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 31, 2018

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	26/11/18	\$795.00	0.20	\$159.00	Letter from M. Moloci and discussion with J. Nemers
JTN	02/12/18	\$375.00	0.20	\$75.00	Email exchanges with M. Moloci, A. Winton, R. Brush and S. Graff re 9:30 appearance
JTN	03/12/18	\$375.00	0.10	\$37.50	Receipt and review of email from C. Hutton re 9:30 appearance
SLG	04/12/18	\$795.00	0.70	\$556.50	Telephone call with P. Denton and J. Levy; review all correspondence
JTN	04/12/18	\$375.00	0.20	\$75.00	Email to and telephone call with S. Graff re 9:30 appointment and matters related thereto
SLG	07/12/18	\$795.00	2.50	\$1,987.50	Attend at 9:30 appointment re disposition of funds and summary judgment; preparation for same
JTN	07/12/18	\$375.00	0.30	\$112.50	Telephone call with S. Graff re today's 9:30 hearing; Receipt and review of endorsement resulting from same
<b>TOTAL:</b>			<u>4.20</u>	<u>\$3,003.00</u>	

500 227

<b>OUR FEE</b>	\$3,003.00
HST at 13%	\$390.39

**DISBURSEMENTS**

**Subject to HST**

Photocopies - Local	\$1.50
HST at 13%	\$0.20

<b>AMOUNT NOW DUE</b>	<b>\$3,395.09</b>
-----------------------	-------------------

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.

34837866.1

IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

238

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

Attention: Mr. Hylton Levy

**Account No.: 627630**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

March 18, 2019

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended February 28, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	07/01/19	\$395.00	0.10	\$39.50	Receipt and review of status update email from C. Yamashita cancelling January 17 motion date
SLG	08/01/19	\$825.00	0.40	\$330.00	Emails with Scarfone Hawkins and telephone call with P. Denton re motions
SLG	14/01/19	\$825.00	0.30	\$247.50	Telephone call with C. Yamashita regarding rescheduling
SLG	15/01/19	\$825.00	0.20	\$165.00	Discussion with J. Nemers re court attendance
JTN	15/01/19	\$395.00	0.80	\$316.00	Discussion with S. Graff re tomorrow's court attendance and related matters; Email exchange with C. Yamashita and client re same; Prepare for tomorrow's court attendance
SLG	16/01/19	\$825.00	0.20	\$165.00	Discussion with J. Nemers; Consider court attendance and outcome
JTN	16/01/19	\$395.00	2.10	\$829.50	Prepare for and attend at court; Email to client re same; Email to service list re same; Discussion with S. Graff re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	18/01/19	\$395.00	0.10	\$39.50	Email exchange with working group
SLG	22/01/19	\$825.00	0.20	\$165.00	Address scheduling with J. Nemers
JTN	22/01/19	\$395.00	0.50	\$197.50	Attend on conference call with Debtors' counsel and NASG's counsel
JTN	25/01/19	\$395.00	0.10	\$39.50	Email exchange with M. Moloci and client
JTN	28/01/19	\$395.00	0.30	\$118.50	Email exchanges with P. Denton, H. Levy and S. Graff re February 14 case conference and related matters
JTN	31/01/19	\$395.00	0.30	\$118.50	Email exchange with A. Wygodny; Receipt and review of email from N. Holmberg
JTN	01/02/19	\$395.00	0.40	\$158.00	Receipt and review of motion record from M. Moloci; Receipt and review of follow-up email from M. Moloci re same
JTN	04/02/19	\$395.00	0.50	\$197.50	Email to working group re motion record of M. Moloci; Receipt and review of email from A. Winton; Attend to related tasks as needed
JTN	05/02/19	\$395.00	0.10	\$39.50	Receipt and review of email from M. Moloci
SLG	06/02/19	\$825.00	0.20	\$165.00	Review emails re scheduling
JTN	06/02/19	\$395.00	0.10	\$39.50	Receipt and review of email from N. Holmberg re cross-examinations; Email to client re same
JTN	08/02/19	\$395.00	0.10	\$39.50	Receipt and review of email from N. Holmberg to M. Moloci, client and rest of service list re next week's case conference
JTN	09/02/19	\$395.00	0.10	\$39.50	Receipt and review of email from M. Moloci to N. Holmberg and working group re next week's case conference
SLG	11/02/19	\$825.00	0.10	\$82.50	Address case conference; discussion with J. Nemers



LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	11/02/19	\$395.00	0.70	\$276.50	Receipt and review of email from N. Holmberg to M. Moloci and working group re this week's case conference; Email to and telephone call with client re same and related matters
JTN	12/02/19	\$395.00	0.30	\$118.50	Email exchanges with court office and client re Thursday's case conference; Email to service list re changed start time re same
SLG	13/02/19	\$825.00	0.10	\$82.50	Discussion with J. Nemers re case conference
JTN	13/02/19	\$395.00	0.70	\$276.50	Receipt and review of moving party's case conference brief; Receipt and review of responding party's case conference brief; Prepare for tomorrow's case conference
JTN	14/02/19	\$395.00	5.00	\$1,975.00	Prepare for and attend at case conference
JTN	15/02/19	\$395.00	0.20	\$79.00	Receipt and review of endorsement from yesterday's court attendance; Receipt and review of email update and attachments from P. Denton to S. Guenette re AIM-related matters
JTN	19/02/19	\$395.00	2.20	\$869.00	Engaged with drafting of notice of motion; Email to client re same; Attend to related matters as needed
JTN	20/02/19	\$395.00	0.80	\$316.00	Engaged with drafting of Discharge Order; Email exchange with client re same
JTN	27/02/19	\$395.00	0.30	\$118.50	Receipt and review of material from P. Denton re financial statements and related matters; Email exchange with P. Denton re same
JTN	28/02/19	\$395.00	0.10	\$39.50	Email exchanges with P. Denton and W. Rostom
TOTAL:			17.60	\$7,683.00	

<b>OUR FEE</b>	<b>\$7,683.00</b>
HST at 13%	\$998.79

## DISBURSEMENTS

**Subject to HST**

Photocopies - Local	\$67.00
HST at 13%	\$8.71

**AMOUNT NOW DUE**

**\$8,757.50**

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.

35485972.1

IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

242

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

Attention: Mr. Hylton Levy

**Account No.: 630876**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

April 22, 2019

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended March 27, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	01/03/19	\$395.00	0.10	\$39.50	Email exchange with client re status
JTN	11/03/19	\$395.00	0.40	\$158.00	Telephone call from M. Moloci advising of partial settlement of NASG litigation and related matters; Email exchange with client re same
SLG	12/03/19	\$825.00	0.30	\$247.50	Emails on hearing re distribution and costs
JTN	12/03/19	\$395.00	0.40	\$158.00	Receipt and review of email from M. Moloci; Consider same; Email exchange and telephone call with P. Denton re same; Further email exchanges with M. Moloci; Receipt and review of high-level CRA-related calculations; Attend to related matters as needed
JTN	13/03/19	\$395.00	0.50	\$197.50	Attend on conference call with P. Denton and M. Moloci re next steps
JTN	14/03/19	\$395.00	0.10	\$39.50	Receipt and review of email from M. Moloci re fees; Email to client and S. Graff re same
SLG	15/03/19	\$825.00	0.30	\$247.50	Emails with J. Nemers, H. Levy and P. Denton re position of Waxman and distribution and possible challenge to fees

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	15/03/19	\$395.00	2.10	\$829.50	Engaged with drafting of response to M. Moloci; Email exchanges with S. Graff and client re same
SLG	16/03/19	\$825.00	0.20	\$165.00	Revise and comment on draft email
JTN	16/03/19	\$395.00	0.10	\$39.50	Email exchanges with S. Graff and client re response to M. Moloci
JTN	17/03/19	\$395.00	0.20	\$79.00	Receipt and review of comments to draft response to M. Moloci from client; Email exchanges with S. Graff and client re same
JTN	18/03/19	\$395.00	0.80	\$316.00	Engaged with revisions to and finalization of email to M. Moloci; Engaged with review of invoices for publication; Issue email to M. Moloci; Follow-up email exchange with M. Moloci re Wednesday's court attendance
SLG	19/03/19	\$825.00	0.30	\$247.50	Review emails re court attendance and reserve
JTN	19/03/19	\$395.00	1.40	\$553.00	Discussion with S. Graff re tomorrow's court attendance; Email exchange with client re same; Prepare for tomorrow's court attendance; Telephone call with H. Levy re same; Receipt and review of email from M. Moloci re tomorrow's attendance; Prepare and issue responding email; Receipt and review of reply email from M. Moloci
JTN	20/03/19	\$395.00	1.00	\$395.00	Prepare for and attend at 9:30 court appointment scheduled by M. Moloci; Discussion with M. Moloci re same
JTN	21/03/19	\$395.00	0.10	\$39.50	Email exchange with H. Levy re meeting with A. Waxman
JTN	27/03/19	\$395.00	0.10	\$39.50	Email exchange with client re status update re meeting with A. Waxman and related matters
<b>TOTAL:</b>			8.40	\$3,791.00	

344

Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	7.30	\$395.00	\$2,883.50
Steven L. Graff (SLG)	1.10	\$825.00	\$907.50

OUR FEE	\$3,791.00
HST at 13%	\$492.83

**DISBURSEMENTS**

**Subject to HST**

Photocopies - Local	\$8.50
HST at 13%	\$1.11

AMOUNT NOW DUE	<u><u>\$4,293.44</u></u>
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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 5221621, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

35824070.1

IN ACCOUNT WITH:

**AIRD BERLIS**

345

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.: 632216**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 13885/141722

April 30, 2019

**Re: Waxman Industrial Services Corp.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended April 30, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	10/04/19	\$395.00	0.20	\$79.00	Email exchange with client re status, including results of client's meeting with A. Waxman, and next steps
JTN	11/04/19	\$395.00	3.90	\$1,540.50	Engaged with review of, revisions to and further drafting of Second Report; Email to client re same; Attend to related matters as needed
JTN	12/04/19	\$395.00	0.10	\$39.50	Email to client
JTN	16/04/19	\$395.00	2.00	\$790.00	Receipt and review of voicemail from M. Moloci; Telephone calls with client re same; Telephone calls with M. Moloci re same; Engaged with drafting and issuance of email to M. Moloci re same; Discussion with S. Graff re same; Attend to related matters as needed
JTN	17/04/19	\$395.00	0.10	\$39.50	Receipt and review of email from M. Moloci
SLG	22/04/19	\$825.00	0.20	\$165.00	Email accounts to P. Denton
JTN	24/04/19	\$395.00	0.10	\$39.50	Receipt and review of email from M. Moloci re today's court attendance and next steps

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	26/04/19	\$825.00	0.10	\$82.50	Emails re outcome of court attendance
JTN	29/04/19	\$395.00	0.40	\$158.00	Email to client re M. Moloci's email; Telephone call with P. Denton re same; Engaged with updating of draft notice of motion and draft Discharge Order
JTN	30/04/19	\$395.00	3.30	\$1,303.50	Engaged with review of revisions to draft Second Report received from client and engaged with further revisions to and drafting of same; Email exchanges with client and S. Graff re same; Responding email to M. Moloci

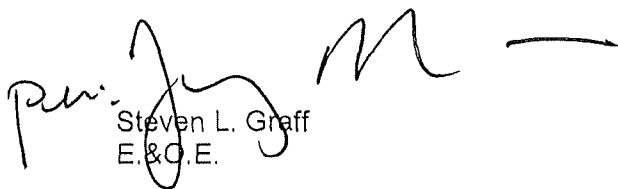
<b>TOTAL:</b>	10.40	\$4,237.00
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Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	10.10	\$395.00	\$3,989.50
Steven L. Graff (SLG)	0.30	\$825.00	\$247.50

<b>OUR FEE</b>	\$4,237.00
HST at 13%	\$550.81

<b>AMOUNT NOW DUE</b>	<b>\$4,787.81</b>
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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.

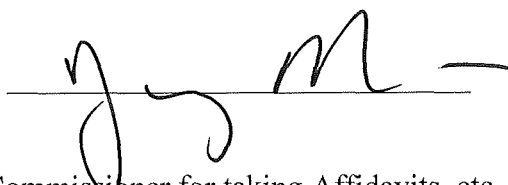
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 7<sup>th</sup> day of May, 2019

A handwritten signature in black ink, appearing to read "Jeremy Nomeny", is written over a horizontal line.

Commissioner for taking Affidavits, etc

Jeremy Nomeny



## 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>
Steven Graff	1991	\$795.00 (2018) \$825.00 (2019)	15.50 3.10	\$12,322.50 \$ 2,557.50
Jeremy Nemers	2014	\$375.00 (2018) \$395.00 (2019)	13.10 33.30	\$ 4,912.50 \$13,153.50
Michael McDonald	2016	\$325.00	9.80	\$ 3,185.00
Alyssa Gebert	2016	\$325.00	11.80	\$ 3,835.00
<b>Clerk/Student</b>	<b>Call to Bar</b>	<b>Avg Hrly Rate</b>	<b>Total Time</b>	<b>Value</b>
Patrick Williams	N/A	\$180.00	0.60	\$ 108.00
John Pappas	N/A	\$260.00	0.70	\$ 182.00

*\*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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

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**AFFIDAVIT OF IAN AVERSA**

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**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

Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Jeremy Nemers (LSUC # 66410Q)**

Tel : (416) 865-7724

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.*

09/06/2018

# TAB L

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

CERTIFICATE NO. 1

AMOUNT \$ 26,000

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 \$ 26,000, being part of the total principal sum of \$ 75,000 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 1<sup>st</sup> day of each month after the date hereof at a notional rate per annum equal to the rate of 19 per cent above the prime commercial lending rate of Bank of Nova Scotia 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 27<sup>th</sup> day of JUNE, 2018,

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

Per: 

Name: PAUL J. STANTON

Title: MANAGING DIRECTOR

**TAB M**

District of ONTARIO  
 Estate No. 32-159037  
 Estate No. 32-159038  
 Court File No. CV-18-595577-00CL  
 Date: May 8, 2019

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 PROJECTED FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS EFFECTIVE APRIL 30, 2019

	Waxman Realty Company Inc.	1340923 Ontario Inc.	Total
<b>Receipts</b>			
Sale of assets	5,000,000.00	1,650,000.00	6,650,000.00
Interest	26,613.23	8,871.08	35,484.31
HST refund	18,043.72	6,002.66	24,046.37
Advance from Secured Creditor [Note 1]	19,500.00	6,500.00	26,000.00
<b>Total Receipts</b>	<b>5,064,156.95</b>	<b>1,671,373.73</b>	<b>6,735,530.68</b>
<b>Disbursements</b>			
Filing Fees paid to Official Receiver	70.00	70.00	140.00
HST on administrative disbursement	28,898.13	10,436.54	39,334.67
Ascend License Fee	275.00	275.00	550.00
Receiver's fees and costs	114,859.88	38,286.63	153,146.50
Legal Fees	57,570.38	19,190.13	76,760.51
Accounting services	30,000.00	17,000.00	47,000.00
Advertising	2,409.00	803.00	3,212.00
Photocopies, postage, fax	1,422.37	474.12	1,896.49
Appraisal fees	14,767.50	4,922.50	19,690.00
Communication Expenses	408.48	136.16	544.64
Bank charges	45.23	15.08	60.30
Payment to Secured Creditor (AIM)	2,057,152.61	278,854.49	2,336,007.10
Payment to Secured Creditor (BDC)		505,511.78	505,511.78
<b>Total Disbursements</b>	<b>2,307,878.57</b>	<b>875,975.42</b>	<b>3,183,853.99</b>
<b>Actual Balance as at April 30, 2019</b>	<b>2,756,278.38</b>	<b>795,398.31</b>	<b>3,551,676.69</b>
Professional fees incurred and not paid			
Receiver's fees (including HST)	23,607.64	7,869.21	31,476.85
Legal Fees (including HST)	13,008.29	4,336.10	17,344.38
Professional fees accrued (including HST)	15,000.00	5,000.00	20,000.00
Repayment of Receiver's Certificate (Note 1)			
Principal	19,500.00	6,500.00	26,000.00
Interest	933.11	311.04	1,244.15
<b>Total accruals</b>	<b>72,049.04</b>	<b>24,016.35</b>	<b>96,065.38</b>
<b>Projected Surplus Funds</b>	<b>2,684,229.35</b>	<b>771,381.97</b>	<b>3,455,611.31</b>

Notes:

- 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.
- With respect to the various receipts and disbursements, unless specific to each of the companies, they have been allocated on the basis of the purchase price allocation set out in the AIM Agreement of Purchase and Sale dated June 5, 2018 for the respective real property interests:  
 Waxman Realty Corp Inc : \$5.0 million and 1340923 Ontario Inc., \$1.650 million
- CRA is holding \$16,582.44 of HST ITC's claimed up to April 30, 2019. The HST refund, if approved as filed by CRA, will be transferred to RT0001 and RC0001 accounts to offset pre-receivership liabilities.

**TAB N**



2018 053

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

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

B E T W E E N:

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

**AFFIDAVIT OF AARON WAXMAN**

I, AARON WAXMAN, of Carlisle, Ontario, MAKE OATH AND SAY:

1. I am one of the respondents in this matter, and, as such, have knowledge of the matters contained in this affidavit. Where my knowledge, information and belief is derived from others or documents, I state the source of my knowledge, information and belief, all of which I believe to be true.
2. This affidavit is in support of the motion by the respondents and my brother Jeremy Waxman ("Jeremy") and I seeking orders that:

- (a) these receivership proceedings be concluded and surplus funds paid to SH LLP in trust, without the need for a claims process and the expenses of the Receiver and Receiver's counsel;
  - (b) Jeremy and I be reimbursed for legal services provided by Scarfone Hawkins LLP ("SH LLP") on behalf of 1340923 Ontario Inc. ("134") and Waxman Realty Company Inc. ("WRC"), and paid for by Jeremy and I personally, from January 2015 to date from the surplus proceeds in these receiverships; and,
  - (c) payment of ongoing and future fees for legal and accounting professional services on behalf of WRC and 134 from the surplus proceeds in these receiverships.
3. I repeat and rely upon my affidavit sworn July 24, 2014, without exhibits, in the NASG Action (referenced below) filed in these proceedings (Responding Application Record of NASG Canada Inc. dated April 19, 2018, Volume 2, Tab 2(e)).

**WAXMAN V. WAXMAN – COURT FILE NO. 07-CL-6901**

4. I am a defendant in the action by Morris Waxman, et al. v. Chester Waxman, et al., Court File No. 07-CL-6901 (the "Waxman Action"). Waxman Industrial Services Corp. ("WIS") and WRC are also defendants in that action. Attached as Exhibit "A" is a copy of the Amended Amended Statement of Claim in the Waxman Action.
5. In January 2015, my brother Jeremy and I retained SH LLP to act as independent legal advisors and settlement counsel on behalf of Jeremy, WRC and 134 and me. Although, Jeremy and 134 were not defendants in the Waxman Action, they sought the benefit of independent legal advice, possible settlement and release in the Waxman Action.

6. In April 2015, we entered into a settlement agreement with the Plaintiffs in the Waxman Action. The terms of settlement and correspondence and communications relating to our settlement in the Waxman Action are confidential and settlement privileged. I maintain and do not waive settlement privilege in the Waxman Action.
7. The terms of settlement and fulfillment of the terms of settlement are in dispute between the Plaintiffs and us in the Waxman Action.
8. Those issues in dispute in the Waxman Action remain outstanding. Accordingly, the Plaintiffs in the Waxman Action maintain their contingent constructive trust and tracing remedy claim against WRC. Pending resolution or determination of those issues, Richard Swan, on behalf of the Plaintiffs in the Waxman Action, has advised that the Plaintiffs consent to payment out of court of the surplus proceeds of the receivership to be held by SH LLP in trust. Attached as Exhibit "B" is a copy of Richard Swan's letter to A. Farber & Partners Inc. (the "Receiver") dated November 13, 2018.
9. Due to the nature of the businesses of WRC and 134, WRC and 134 had no cash flow or funds with which to pay for professional services for work undertaken by lawyers and accountants. Accordingly, Jeremy and I have each paid from our own personal funds \$5,102.61 on behalf of WRC and \$1,700.87 on behalf of 134 for legal services provided by SH LLP in the Waxman Action from January 15 to December 31, 2018.
10. On behalf of Jeremy and I, we request reimbursement of \$6,803.48 each from the surplus proceeds in these receiverships.

11. In addition, we request an order that fees for ongoing professional services provided on behalf of WRC and 134 in the Waxman Action be paid from surplus proceeds in these receiverships.

**WAXMAN ATS. NASG – COURT FILE NO. CV-1410606-00CL**

12. I am a defendant in the action by NASG Canada Inc. (“NASG”), Court File No. CV-14-10606-00CL (the “NASG Action”).
13. In January 2015, Jeremy and I retained SH LLP to act as independent counsel on behalf of WRC, 134, Jeremy and me. Rob Brush and Clark Tedesco of Crawley MacKewn Brush LLP are our lawyers of record with carriage of our defence in that matter on our behalf as well as American Iron & Metal LP and American Iron and Metal GP Inc. (collectively “AIM”).
14. As above, due to the nature of the businesses of WRC and 134, WRC and 134 had no cash flow or funds with which to pay for professional services and fees for work undertaken by lawyers and accountants. Jeremy and I have each paid \$3,540.72 on behalf of WRC and \$1,180.24 on behalf of 134 in respect of legal services provided to WRC and 134 by SH LLP in the NASG Action from January 2015 to December 31, 2018.
15. On behalf of Jeremy and I, we request reimbursement of \$4,720.96 each from the surplus proceeds in these receiverships.
16. In addition, we request an order that fees for ongoing legal services provided by SH LLP on behalf of WRC and 134 in the NASG Action be paid from surplus proceeds in these receiverships.

**THESE RECEIVERSHIP PROCEEDINGS**

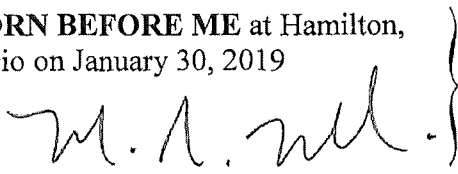
17. As set-out in the Affidavit of Kamila Wirpszo, sworn April 11, 2018 (Application Record), in these receivership proceedings, AIM sought to enforce the “WRI Indebtedness” and “134 Indebtedness” as against WRC and 134 respectively in 2017. Jeremy and I, on behalf of WRC and 134, retained SH LLP as lawyers on behalf of WRC and 134 to deal with those issues in dispute.
18. From November 2017 to December 31, 2018, Jeremy and I have each paid \$38,075.19 to SH LLP in respect of legal fees, disbursements and taxes incurred on behalf of WRC and 134 in respect to the issues in dispute and these receivership proceedings.
19. On behalf of Jeremy and I, we request reimbursement of \$38,075.19 each from the surplus proceeds of these receiverships.
20. In addition, we request an order that fees for ongoing professional services, including both legal services provided by SH LLP and accounting services provided by BDFP & Associates LLP (“BDFP”) on behalf of WRC and 134 in these receivership proceedings and afterwards be paid for from surplus proceeds of these receiverships.
21. On behalf of WRC and 134, I asked the Receiver to engage and pay the accountants, BDFP, on behalf of WRC and 134, to complete the financial statements and corporate income tax and HST filings on behalf of WRC and 134 for the years 2015, 2016, 2017 and 2018, which they did. The fiscal year end for WRC and 134 is August 31.
22. I am advised by Vern Pinto (“Pinto”) of BDFP that the corporate income tax and HST filings for WRC and 134 were completed and filed for 2015, 2016 and 2017, and that the

corporate income tax and HST filings for WRC and 134 for the fiscal year end August 31, 2018 will be filed with the CRA during the third week of February 2019.


23. Pinto provided me with copies of the CRA account balances for corporate income taxes and HST owing on behalf of WRC which, through to January 25, 2019, total \$17,069.08 and \$18,741.52, respectively. Attached as Exhibit "C" are copies of the CRA account balance statements for WRC.
24. Pinto provided me with copies of the CRA account balances for corporate income taxes and HST owing on behalf of 134 which, through to November 29, 2018, total \$79,624.58 and \$13,412.71, respectively. Attached as Exhibit "D" are copies of the CRA account balance statements for 134.
25. By email on January 28, 2019, Paul Denton provided an update regarding the Receiver's accrued fees, its counsel's fees and funds in the Receiver's trust account, a copy of which is attached as Exhibit "E".
26. Based upon correspondence and communications with the Receiver and BDFP, it is my understanding and belief that all issues between AIM, as applicant, and WRC/134, as respondents, in these proceedings have been resolved.
27. To the best of my knowledge, information and belief, there are no other outstanding debts of WRC/134, and therefore no other possible claims, other than those that are already known to the Receiver in the receivership proceedings. To the best of my knowledge, the only outstanding debts of WRC and 134 are the amounts owed, or may be owing, to the CRA for corporate income taxes and HST.

28. To the best of my knowledge, the only outstanding claims remaining to be determined are the contingent constructive trust and tracing remedy claims against WRC in the Waxman Action and the contingent constructive trust and tracing remedy claims against WRC and 134 in the NASG Action.
29. The respondents request that these receivership proceedings be concluded to reduce the expense of the Receiver and the Receiver's counsel and further dissipation of the trust funds.
30. I believe that the remaining issues between WRC/134 and the CRA can be dealt with in the usual course by BDFP.
31. The contingent constructive trust and tracing remedy claims in the Waxman Action and the NASG Action may be resolved or determined within those actions.

**SWORN BEFORE ME** at Hamilton,  
Ontario on January 30, 2019

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits*  
*(or as may be)*

**MATTHEW G. MOLOCI**

  
\_\_\_\_\_  
**AARON WAXMAN**

AMERICAN IRON & METAL COMPANY INC.  
Applicant

-and- 1340923 ONTARIO INC. et al.  
Respondents

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

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

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF**  
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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

**SUPPLEMENTARY AFFIDAVIT OF AARON WAXMAN**

I, AARON WAXMAN, of Carlisle, Ontario, MAKE OATH AND SAY:

1. I am a director and officer of the respondents, 1340923 Ontario Inc. ("134") and Waxman Realty Company Inc. ("WRC"), and as such, have knowledge of the matters contained in this affidavit. Where my knowledge, information and belief is derived from others or documents, I state the source of my knowledge, information and belief, all of which I believe to be true.
2. This affidavit is supplementary to my affidavit sworn January 30, 2019 in this motion.

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3. Throughout this proceeding, I have been involved with Vernon Pinto ("Vern") of BDFP & Associates LLP, the accountants on behalf of 134 and WRC. Vern has been working with Paul Denton, on behalf of the Receiver, to bring up-to-date the accounting, financial statements and income tax and H.S.T. returns on behalf of 134 and WRC.
4. The financial statements and income tax returns for the fiscal year ended August 31, 2018 have recently been filed with the Canada Revenue Agency.
5. Vern provided the lawyers on behalf of 134 and WRC the account balances for the income tax and H.S.T. accounts of 134 and WRC, copies of which are attached below as:
  - (a) Exhibit "A" a copy of the account balance regarding Waxman Realty Company Inc., Income Tax Account No. 801845660 RC0001;
  - (b) Exhibit "B" a copy of the account balance regarding Waxman Realty Company Inc., H.S.T. Account No. 801845660 RT0001;
  - (c) Exhibit "C" a copy of the account balance regarding 1340923 Ontario Inc., Income Tax Account No. 867451825 RC0001; and,
  - (d) Exhibit "D" a copy of the account balance regarding 1340923 Ontario Inc., H.S.T. Account No. 867451825 RT0001.
6. On behalf of 134 and WRC, we ask that the full amount of the current indebtedness, being \$467,268.76, owed to the CRA in respect of outstanding income taxes and H.S.T. as above be paid from the funds held in the receivership proceedings and that the CRA's claims, liens and deemed trust claims be released.

- 3 -

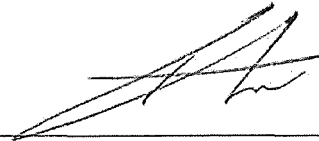
7. I am advised by our lawyers that they have communicated with the CRA who is in agreement. Please see attached as Exhibit "E" a copy of the e-mail exchange between the lawyers for the respondents and the CRA.
8. I am advised by our lawyers that Kevin O'Hara, on behalf of the Ministry of Finance – Ontario, has advised that there are no outstanding debts for corporate tax owing to Ontario for WRC or 134 and the Ministry of Finance – Ontario does not oppose the conclusion of the receivership proceedings and distribution of surplus proceeds to the debtor companies. Attached as Exhibit "F" is a copy of the e-mail exchange between our lawyers and Mr. O'Hara.

**SWORN BEFORE ME** at  
Hamilton, Ontario on March 14, 2019.



*Commissioner for Taking Affidavits  
(or as may be)*

**MATTHEW G. MOLOCI**



**AARON WAXMAN**

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

-and- **1340923 ONTARIO INC. et al.**  
Respondents

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

**ONTARIO  
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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**

**MOTION RECORD  
(returnable May 28, 2019)**

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