



No. S-229607  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**MITSUBISHI HC CAPITAL CANADA INC.**

PETITIONER

AND:

**VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.**

RESPONDENT

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.**

**FIRST REPORT OF THE RECEIVER**

**May 24, 2023**

**BDO Canada Limited, Receiver of  
Vic Van Isle Construction Ltd.,  
VVI Construction Ltd., and  
Lortap Enterprises Ltd.**

Royal Centre  
Unit 1100 – 1055 W Georgia Street  
Vancouver, BC V6E 3P3

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## I. INTRODUCTION AND BACKGROUND

1. Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. (collectively as the “**Companies**”) were incorporated and registered under the laws of the Province of British Columbia respectively on April 1, 2021, January 20, 2004, and May 5, 1994. The principals of the Companies are Mr. Jamie Hampton and Mr. Mark Herring.
2. The principal business of Vic Van Isle Construction Ltd. (“**Vic Van Isle**”) and VVI Construction Ltd. (“**VVI**”) was to provide construction and general contracting services for commercial and residential projects. The principal business of Lortap Enterprises Ltd. (“**Lortap**”) was to provide milling and cabinetry services. The Companies owned various construction and milling equipment and operated from leased premises located at 96 Cartier Street and 1300 Powerhouse Road, both in Revelstoke in British Columbia (the “**Premises**”).
3. On December 2, 2022, on the application of the Petitioner, Mitsubishi HC Capital Canada Inc. (“**Mitsubishi**”), the Supreme Court of British Columbia (this “**Court**”) pronounced an Order (the “**Initial Receivership Order**”) appointing BDO Canada Limited, as limited receiver (in such capacity, the “**Receiver**”) of the following assets of Vic Van Isle (the “**Initial Receivership Assets**”):
  - (a) 2012 Caterpillar TL1255 4x4 (Serial No. TBN01026);
  - (b) 2014 John Deere 624K Front End Loader (Serial No. 1DW624KTVEF661885); and
  - (c) 2013 Genie Lift 45/25 (Serial No. Z452513A-47333)
4. A Copy of the Initial Receivership Order is attached as **Appendix A**.
5. Accurate Effective Bailiffs Ltd., as an agent of the landlord of one of the Premises had commenced a distraint process against the Initial Receivership Assets on or about October 20, 2022 and November 8, 2022. The bailiff did

not complete the sale of the Initial Receivership Assets and the distraint was not completed as a result. The bailiff was notified of the Initial Receivership Order and transferred storage costs to the Receiver, which effectively transferred possession of the Initial Receivership Assets to the Receiver.

6. Due to the Companies attempting to refinance the secured debt owed to Mitsubishi, the Receiver did not take any steps to realize on the Initial Receivership Assets. Although the Receiver did not attempt to realize on the Initial Receivership Assets, it notified the parties, the Office of the Superintendent of Bankruptcy and the bailiff of the Initial Receivership Order and the Receiver's appointment.
7. The Companies were ultimately unsuccessful in obtaining refinancing with another lender and on April 11, 2023, the Court granted a Receivership Order (the "**Receivership Order**"), replacing the Initial Receivership Order, and appointing BDO Canada Limited as Receiver, of all assets, undertakings, and properties (the "**Assets**") of the Companies.
8. A copy of the Receivership Order is attached as **Appendix B**.

## II. **PURPOSE OF THIS REPORT**

9. This first report of the Receiver (this "**First Report**" or "**Report**") has been prepared to provide this Honourable Court with information with respect to the following:
  - a) The background of the Companies and the Assets;
  - b) The activities of the Receiver since the date of the Receivership Order;
  - c) The sales process undertaken by the Receiver to solicit offers and proposals for the Assets;
  - d) To request the Court's approval of the Auction Services Agreement between the Receiver and McDougall Auctions Ltd.; and,



- e) To request the approval of the Purchase and Sale Agreement between the Receiver and Woody's Projects.

### **III. SCOPE AND TERMS OF REFERENCE**

- 10. In preparing this Report and in making the recommendations contained herein, the Receiver has relied upon information obtained from discussions with the principals, former employees of the Companies, and where appropriate, the Companies' books and records.
- 11. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other assurance in respect of such information as reflected in this Report.
- 12. All references to dollars are in Canadian currency unless otherwise noted.

### **IV. THE BUSINESS, ASSETS, AND LIABILITIES**

#### **The Business**

- 13. The Companies provided construction and general contracting services for commercial and residential projects as well as general milling and cabinetry manufacturing.
- 14. The Receiver retained the services of the office accountant and the payroll administrator to assist with the filing of records of employment and various books and records for the purposes of identifying the Assets of each of the Companies.
- 15. As at the date of the Receivership Order, the Companies employed a total of forty-four (44) employees. The Receiver terminated all of the employees.
- 16. The Premises consist of two lots with two buildings connected by a yard.

17. The building at 96 Cartier Street hosts the office space for the Companies, the milling workshop for Lortap, as well as Vic Van Isle's home hardware store component of the business (Vic Van Isle dba Glacier Building Supplies).
18. The building at 1300 Powerhouse Road is the location for the equipment rental and repairs workshop of Vic Van Isle.
19. The Companies insurance was cancelled prior to the Receivership Order. The Receiver obtained insurance coverage for the Assets via Hub International Limited.
20. We understand, as at the date of the Receivership Order, VVI and Vic Van Isle did not have any ongoing active projects. Lortap, however, had ongoing active projects which, after assessing the economics, the Receiver did not continue or complete.

#### **The Assets**

21. The Companies commissioned appraisals for the purposes of valuing the Assets for Mitsubishi and its attempted refinancing. The Receiver is in receipt of four (4) appraisals for the Assets.
22. Some assets on these appraisals were sold by the Companies prior to Receivership Order.
23. The former accountant of the Companies was retained to identify third party leased assets and provide the Receiver with documentation on same.
24. Vic Van Isle facilitated an equipment rental shop to lease out equipment ("**Rental Equipment**") on a monthly basis.
25. The Receiver has contacted these Rental Equipment customers to remit outstanding monthly rental payments and to either return or arrange to purchase the Rental Equipment from the Receiver.

26. The Receiver's bailiff and its contractor assisted in our efforts to identify, locate, and secure the Assets within the enclosed yard of the Premises.

#### **Other Assets and Accounts Receivable**

27. There are Vic Van Isle assets in Hot Springs Cove, Tofino, British Columbia, on reserve lands of the Hesquiaht First Nations consisting of (the "**Tofino Assets**"):
  - (a) 2012 Ford F350;
  - (b) 2007 Gradall 544D-10;
  - (c) 2015 Big Tex Trailer; and
  - (d) Miscellaneous scaffolding.
28. The Tofino Assets were previously utilized for a Vic Van Isle project at Hot Springs Cove. Vic Van Isle did not have the funding to transport the Tofino Assets back to Revelstoke as Vic Van Isle is in arrears with the barging company.
29. The Hesquiaht First Nations was in contact with the Receiver with an offer for the Tofino Assets. However, the offer was well below the forced liquidation value ("**FLV**") of the Tofino Assets and as such, the Receiver did not accept this offer.
30. Woody's Projects is also interested in purchasing the Tofino Assets and submitted an offer which will be detailed in a later section of this Report.
31. The Companies vehicles and trailers previously with employees have been returned to the Premises.
32. The Receiver retained bailiff services to repossess two vehicles in Kelowna, British Columbia, to be returned to the Premises.
33. The Receiver understands there are four (4) Ford vehicles currently leased through Ford Credit Canada ("**Leased Vehicles**"). On a preliminary basis,

the Receiver believes there to be equity in these leases and will make efforts to either return the vehicles to Ford Credit Canada or to realize on these Assets.

34. The Receiver understands a SkyTrak telescopic handler was previously stolen from a job site of one of the Companies. The Receiver continues to work with the principals on the potential whereabouts of this Asset for recovery.
35. Per the books and records, there are outstanding accounts receivables ("AR") balances as follows:
  - (a) Lortap - \$765,352;
  - (b) VVI - \$1,729,080; and,
  - (c) Vic Van Isle - \$222,264.
36. The Receiver issued AR demand letters to customers with an outstanding balance. However, in discussions with the principals and former accountant, a significant portion of these outstanding balances pertain to historical work rendered that is deemed uncollectible or the customer would have a right to set-off, as the customer is also a creditor of the Companies.
37. As such, the Receiver does not anticipate any material recovery from the outstanding AR. Nevertheless, the Receiver continues to work with the principals to understand which balances to focus its recovery efforts on.



## Liabilities

38. The Companies have estimated liabilities totaling \$8,739,134 as follows:

	VVI	Vic Van Isle	Lortap	Total
	(\$000's)			
<i>Secured Creditors</i>				
Canada Revenue Agency - Source Deductions	308,924	45,000	145,206	499,130
Canada Revenue Agency - GST	231,836	5,390	25,084	262,310
WEPP Super Priority	32,764	7,688	25,729	66,181
Mitsubishi HC Capital Canada	-	1,500,000	-	1,500,000
	573,524	1,558,078	196,019	2,327,621
<i>Unsecured Creditors</i>				
	5,035,489	552,771	823,253	6,411,513
<b>Total Estimated Liabilities</b>	<b>5,609,013</b>	<b>2,110,849</b>	<b>1,019,272</b>	<b>8,739,134</b>

39. The debt owing to Mitsubishi is owed by all of the Companies and cross guaranteed by each of them. The Mitsubishi debt has been shown as a debt under Vic Van Isle for illustration purposes only.
40. The first secured creditor, Mitsubishi, is likely to suffer a shortfall on its loan of \$1.5 million after paying out priority claims.

## V. THE ACTIVITIES OF THE RECEIVER

41. Since the date of the Receivership Order, the Receiver's activities have included:
- Performing its statutory duties as required pursuant to subsection 245 (1) and 246(1) of the *Bankruptcy and Insolvency Act (Canada)* in relation to creditor and Official Receiver notification;
  - Attending the Companies' Premises in Revelstoke, British Columbia;
  - Retaining the services of Accurate Effective Bailiffs to assist the Receiver with securing the Premises and Assets;
  - Arranging for a daily custodian to monitor the Premises and Assets;

- e) Working with the former accountant and principals to obtain additional information with respect to Assets of the Companies;
- f) Facilitating and administering the WEPP claims of forty-four (44) former employees of the Companies;
- g) Retaining Miller Thomson LLP to act as legal counsel to the Receiver;
- h) Soliciting auction and offer proposals with respect to the Companies' Assets and the Tofino Assets;
- i) Reviewing auction proposals and offers for the Assets and discussing these offers with Mitsubishi;
- j) Pursuing collection of the Companies' AR;
- k) Providing updates to Mitsubishi; and,
- l) Preparing this First Report to Court.

## VI. SALES PROCESS OF THE RECEIVER

- 42. The Receiver conducted a tender process to solicit auction proposals and offers for the Assets.
- 43. The Rental Equipment, Tofino Assets, and seized vehicles in Kelowna were not included in the asset listing provided to interested parties as the relevant information was not available at the time.
- 44. A tender package was issued on April 27, 2023, to twenty-two (22) different interested parties ("**Interested Parties**") who were business contacts of the Companies, auctioneers, or vendors in the local construction industry.
- 45. An advertisement for the sale of the Assets was placed in the Insolvency Insider publication on May 1, 2023.

46. The Receiver requested proposals and offers to be submitted by a deadline of Friday, May 12, 2023, 4:00PM PST.
47. The Receiver requested for auctioneers to provide their proposals with either a cash offer, an offer with a net minimum guarantee, or an offer for auction on a commission basis.
48. Of the Interested Parties, eleven (11) attended the Premises for an inspection of the Assets.
49. The Receiver received twelve (12) proposals and offers for the Assets of which eight (8) were proposals from auctioneers and four (4) were cash offers for specific equipment Assets.
50. Although the Tofino Assets were not included in this solicitation process due to its isolated location, Woody's Projects did submit a cash offer for the Tofino Assets on an "as is where is" basis for the Receiver's consideration.
51. The Receiver believes its sales process was fair and transparent and provided all Interested Parties with equal access to information and opportunity to submit an offer or proposal.
52. The Receiver believes its sale process was sufficiently robust and lengthy in the circumstances to maximise value of the Assets.

## **VII. EVALUATION OF AUCTION PROPOSALS AND OFFERS**

### **Auction Proposals**

53. The Receiver prepared a summary of the proposals for review with the first secured creditor, Mitsubishi and its legal counsel.
54. In consideration of the proposals, the Receiver reviewed:
  - a) The proposed purchase prices and expected recovery;
  - b) The amount of the net minimum guarantees;

- c) The commissions and buyer's premiums and related pricing structures;
  - d) Market advertisement plan, where applicable;
  - e) Key dates, including auction and estimated timeframe to vacate the Premises; and
  - f) Mitsubishi's support of the offers.
55. The proposal with the highest net minimum guarantee was from McDougall Auctions Ltd. ("**McDougall**"), which had a net minimum guarantee that substantially exceeded the next best offer.
56. The Receiver believes that the proposal from McDougall is the best offer as it provides certainty in terms of a recovery to the creditors.
57. It should be noted that there was a cash offer for the Lortap assets only which exceeded the net minimum guarantee allocated in the McDougall offer. However, McDougall has informed the Receiver that if the Lortap assets were removed from their proposal that their net minimum guarantee for the remaining assets would be reduced by over \$100,000. Therefore, the McDougall offer represents a better overall recovery to the creditors of the Companies.
58. The first secured creditor, Mitsubishi, supports the McDougall offer.
59. The Receiver has executed an Auction Services Agreement with McDougall dated May 18, 2023 ("**ASA**"). This acceptance of the McDougall offer is subject to Court approval. A copy of the ASA with the purchase price redacted is attached as **Appendix C**.
60. **Confidential Appendix 1** is the non-redacted ASA, which is not attached to this Report due to the confidential and commercially sensitive information contained therein.



61. The Receiver will be seeking a confidential sealing order ("**Sealing Order**") over Confidential Appendix 1 until after the completion of the auction.
62. The Receiver requests the Court's approval of the ASA.
63. In addition to the Assets listed in the ASA, there are Assets located offsite from the Premises that the Receiver is in the process of seizing and having brought back to site. The Receiver intends to have McDougall sell these Assets on a commission basis, separate from the ASA.
64. The Receiver requests the Court's approval to have McDougall sell the additional Assets that are brought back to the Premises.

#### **Tofino Assets**

65. Woody's Projects submitted an offer to the Receiver for \$20,000 for the Tofino Assets.
66. The Tofino Assets are located in a remote location near Tofino, British Columbia. This is a secluded location that can only be accessed via barge.
67. Based on appraisals provided by the Companies, the forced liquidation value ("**FLV**") of the Tofino Assets is estimated to be \$56,000.
68. The Receiver understands that the Tofino Assets have been stored, unattended for about two years and require maintenance work to make the equipment operational. It is likely that these assets have deteriorated due to being inactive about two years and having been stored next to the ocean. In addition, the Receiver estimates that the cost of removing the Tofino Assets and bringing them back to Revelstoke will be between \$10,000 and \$15,000.
69. The Receiver considered the following in accepting the offer from Woody's Projects:
  - a) The proposed purchase price and expected recovery;

- b) The associated costs of transporting the Tofino Assets back to Revelstoke for auction and subsequent applicable auction commission;
  - c) The FLV of the Tofino Assets;
  - d) The difficulty of arranging for barging services to a secluded location; and,
  - e) Woody's Project's familiarity with the Tofino Assets and location of same.
70. The Receiver has accepted the offer from Woody's Projects. This acceptance of the Woody's Projects offer is subject to Court approval. A copy of the Asset Purchase Agreement with Woody's Projects ("APA") is attached as **Appendix D**.
71. The first secured creditor, Mitsubishi, supports the APA.
72. The Receiver requests that the Court approve the APA.

## **VIII. CONCLUSION AND RECOMMENDATIONS**

### **Conclusion**

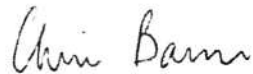
73. There are estimated payroll source deduction arrears of approximately \$500,000. Payroll source deductions rank ahead of all secured creditors.
74. The Receiver anticipates that there may be a shortfall to the first secured creditor, Mitsubishi, in which case there will not be a recovery to any other creditors who rank behind Mitsubishi.
75. There were twelve (12) offers and proposals received for the Assets of the Companies.
76. The Receiver has accepted the auction proposal that provides the highest guaranteed amount to the creditors.
77. The Receiver has accepted the highest offer received for the Tofino Assets.

**Recommendations**

78. The Receiver recommends that the Court approve the following:
- a) The ASA with McDougall, in addition to engaging McDougall to sell any other assets that the Receiver recovers;
  - b) A Sealing Order over Confidential Appendix 1 until the completion of the action; and,
  - c) the APA with Woody's Projects.

All of which is respectfully submitted this 24<sup>th</sup> day of May, 2023.

**BDO CANADA LIMITED,**  
In its capacity as Receiver of  
Vic Van Isle Construction Ltd.,  
VVI Construction Ltd., and  
Lortap Enterprises Ltd.  
and not in its personal or corporate capacity.  
Per:



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Chris Bowra  
Vice President



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Martin Chan  
Manager

**APPENDIX A**

**INITIAL RECEIVERHSIP ORDER DATED DECEMBER 2, 2022**





No. S-229607  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

MITSUBISHI HC CAPITAL CANADA INC.

Petitioner

- and -

VIC VAN ISLE CONSTRUCTION LTD.

Respondent

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )

Mr. Justice Bastarache )

) 2 /DECEMBER/2022  
)  
)

ON THE APPLICATION, without notice, of Mitsubishi HC Capital Canada Inc. (formerly Hitachi Capital Canada Corp.) (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”) appointing BDO Canada Limited (“BDO”) as limited scope Receiver (in such capacity, the “Receiver”) without security, only of the specified Property (as defined below) of Vic Van Isle Construction Ltd. (the “Debtor”), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Philippe Frenette sworn December 2, 2022, and noting the consent of BDO to act as the Receiver;

AND ON HEARING Bryan Hicks of Miller Thomson LLP, counsel for the Applicant, and on being advised that this application is without notice to any other party.

THIS COURT ORDERS AND DECLARES that:

### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA, BDO is appointed Receiver, without security, only of the property of the Debtor listed on **Schedule "A"** hereto, including all proceeds (the "**Property**") for the purpose of preserving the value and viability of the business of the Debtor, preserving the assets of the business, preserving a contemplated refinancing of the business of the Debtor, preserving the interests of all stakeholders, and investigating the Debtor's business and affairs in accordance with the terms of this Order. For greater certainty, the Receiver shall not take possession of, or manage or control the business of the Debtor.

### **RECEIVER'S POWERS**

2. The Receiver is 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 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 receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, seizing and taking possession of the Property, storing the Property, relocating the Property, engaging independent security personnel, taking physical inventories and placing insurance coverage in respect of the Property;
  - (c) 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;
  - (d) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (e) to report to, meet with and discuss with the Lender and other affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
  - (f) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
  - (g) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,



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

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

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "Persons" and each 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, and possession of, the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, 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 Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 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 solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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 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 require including, without limitation, 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process whatsoever, including but not limited to any distraint proceeding, or any proceeding in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

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

9. All rights and remedies (including, without limitation, landlord distress rights and set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

#### **EMPLOYEES**

10. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA.

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

11. Nothing in this Order 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.



12. 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 the Receiver is actually in possession.
13. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
14. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

15. 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:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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**

16. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

18. 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

19. The Receiver is authorized and 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 ~~\$50,000~~ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver 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 charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
20. 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.
21. The Receiver is authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
22. 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 OF MATERIALS

23. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.bdo.ca/en-ca/services/advisory/debt-and-financial-recovery-services/corporate-restructuring/> (the "**Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.



24. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as **Schedule "C"** (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
25. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
26. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
27. Notwithstanding paragraph 27 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
28. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

#### **GENERAL**

29. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
30. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

- 32. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
- 33. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
- 34. The Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
- 35. Endorsement of this Order by counsel appearing on this application other than the Applicant is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

  
\_\_\_\_\_  
Signature of Bryan Hicks  
lawyer for Petitioner

BY THE COURT  
~~DISTRICT~~ REGISTRAR

  
BASRAM, J.





## SCHEDULE "A"

In this Order, until further order of the Court, "**Property**" shall mean the following assets, property and undertaking the Debtor:

1. All Records of the Debtor, including communications, financial records and statements related to the Debtor's personal property, equipment, business, lease arrangements, surrendering of assets, and business dealings, including with any non-arm's length or related parties;
2. The following equipment of the Debtor:
  - a. 2008 Gradall 544D-10 4X4 (Serial no. 0160032663 or 0160032696);
  - b. 2014 John Deere 624K Front End Loader (Serial no. 1DW624KTVEF661885);  
and
  - c. 2013 Genie Lift 45/25 (Serial no. Z452513A-47333).
3. Any other equipment of the Debtor that is or becomes subject to a distress warrant or other notice from the Bailiff (as defined in the Frenette Affidavit) or similar party purporting to exercise rights of distress on behalf of a landlord against the Debtor under applicable law.

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that **BDO Canada Limited**, the **Receiver** (the "Receiver") of certain assets, undertakings and properties of **Vic Van Isle Construction Ltd** appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the \_\_\_\_\_ day of **December**, 2022 (the "Order") made in SCBC Action No. \_\_\_\_\_ 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. Unless otherwise stated herein, capitalized terms used but not otherwise defined are given the meaning ascribed to such terms in the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily]; [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the            day of                                 , 201          .

**BDO Canada Limited**, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:  
Name:  
Title:

Schedule "C"

Demand for Notice

**TO:** MITSUBISHI HC CAPITAL CANADA INC.  
c/o [Name of Counsel to the Applicant]  
Attention:  
Email:

**AND TO:** BDO Canada Limited  
c/o [Name of Counsel to the Receiver]  
Attention:  
Email:

**Re: In the matter of the Receivership of VIC VAN ISLE CONSTRUCTION LTD.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_



**APPENDIX B**  
**RECEIVERSHIP ORDER DATED APRIL 11, 2023**



No. S-229607  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

MITSUBISHI HC CAPITAL CANADA INC.

Petitioner

- and -

VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.

Respondents

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND  
LORTAP ENTERPRISES LTD.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

~~JUSTICE~~ JUSTICE ~~REUMING~~

)  
)  
)  
)

11 /APRIL/2023

ON THE APPLICATION of Mitsubishi HC Capital Canada Inc. (formerly Hitachi Capital Canada Corp.) (the "Petitioner") 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") appointing BDO Canada Limited ("BDO") as Receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Philippe Frenette affirmed December 2, 2022, and Affidavit #2 of Philippe Frenette affirmed March 31, 2023, and noting the consent of BDO to act as the Receiver;

AND ON HEARING James Reid of Miller Thomson LLP, counsel for the Petitioner;

AND UPON NOTING the consent of the Respondents and counsel to 2427324 Alberta Ltd. endorsed hereon.

THIS COURT ORDERS AND DECLARES that:

**REPLACEMENT OF LIMITED RECEIVERSHIP ORDER**

1. The Order granted December 2, 2022, in this action for the appointment of BDO as limited receiver over certain property of the Debtor Vic Van Isle Construction Ltd. is hereby discharged and replaced in its entirety by this Order.

**APPOINTMENT**

2. Pursuant to Section 243(1) of the BIA, BDO is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "Property").

**RECEIVER'S POWERS**

3. The Receiver is 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 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 receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing Insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the businesses of the Debtors or any part or parts thereof;
  - (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 these amounts, including, without limitation, enforcement of 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, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) 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 considers appropriate;
- (l) 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 a single transaction for consideration up to \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) 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, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with the Lender and other affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) 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 considered necessary or appropriate by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;



- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to assign the Debtors into bankruptcy; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

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

4. Each of (i) the Debtors; (ii) all of the Debtors' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "Persons" and each 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, and possession of, the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, 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 (collectively, the "Records") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 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 solicitor client privilege or statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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 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 require including, without limitation, 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. No proceeding or enforcement process whatsoever, including but not limited to any distraint proceeding, or any proceeding in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

9. 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 stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the Initiating documentation on the respective Debtor and the Receiver.

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

10. All rights and remedies (including, without limitation, landlord distress rights and set-off rights) against the Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. 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 any of the Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

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

#### EMPLOYEES

14. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the respective Debtor until such time as the Receiver, on the respective Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

#### PERSONAL INFORMATION

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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. Nothing in this Order 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
17. 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 the Receiver is actually in possession.
18. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
19. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### LIMITATION ON THE RECEIVER'S LIABILITY

20. 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:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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

21. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case



at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
23. 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

24. The Receiver is authorized and 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 \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver 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 charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
25. 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.
26. The Receiver is 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.
27. 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.

#### RETENTION OF LAWYERS

28. The Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use Miller

Thomson LLP, solicitors for the Petitioner herein, as its own counsel in respect of any matter where there is no conflict of interest.

29. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Petitioner and the Receiver or a third party, the Receiver shall utilize independent counsel.

#### ALLOCATION

30. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

#### SERVICE AND NOTICE OF MATERIALS

31. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.bdo.ca/en-ca/services/advisory/debt-and-financial-recovery-services/corporate-restructuring/> (the "**Website**") and shall post there as soon as practicable:
- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
32. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Petitioner a demand for notice in the form attached as **Schedule "B"** (the "**Demand for Notice**"). The Receiver and the Petitioner need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Petitioner from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
33. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
34. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
35. Notwithstanding paragraph 34 of this Order, service of the Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for



the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.

36. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

#### GENERAL

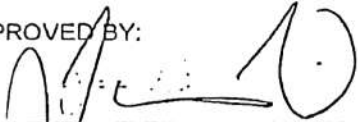
37. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
38. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
40. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
41. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
42. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
43. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

**SERVICE**

44. Time for service of the application for this Order is hereby abridged and service thereof is deemed good and sufficient and this application is properly returnable today.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

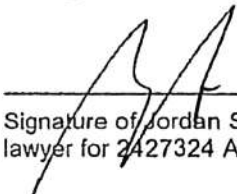
APPROVED BY:



Signature of James Reid  
lawyer for Mitsubishi HC Capital Canada Inc.



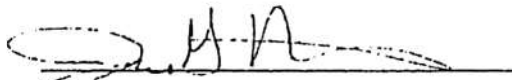
BY THE COURT  
DISTRICT REGISTRAR



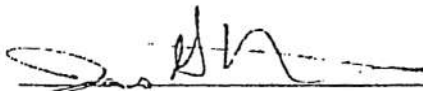
Signature of Jordan Schultz  
lawyer for 2427324 Alberta Ltd.



Signature of Jamie Hampton  
Director of Vic Van Isle Construction Ltd.



Signature of Jamie Hampton  
Director of VVI Construction Ltd.



Signature of Jamie Hampton  
Director of Lortap Enterprises Ltd..



SCHEDULE "A"

RECEIVER CERTIFICATE

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

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that BDO Canada Limited, the Receiver (the "Receiver") of certain assets, undertakings and properties of Vic Van Isle Construction Ltd appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the 15 day of February, 2023 (the "Order") made in SCBC Action No. 229607 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$3,000,000, being part of the total principal sum of \$3,000,000 which the Receiver is authorized to borrow under and pursuant to the Order. Unless otherwise stated herein, capitalized terms used but not otherwise defined are given the meaning ascribed to such terms in the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily ~~monthly~~ not in advance on the 15 day of each month after the date hereof at a notional rate per annum equal to the rate of 5.75 per cent above the prime commercial lending rate of 5.75 from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at 1000.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the            day of           , 2021.

BDO Canada Limited, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:  
Name:  
Title:

**Schedule "B"**

**Demand for Notice**

**TO:** MITSUBISHI HC CAPITAL CANADA INC.  
c/o Miller Thomson LLP  
Attention: James Reid  
Email: jwreid@millerthomson.com

**AND TO:** BDO Canada Limited  
c/o [Name of Counsel to the Receiver]  
Attention:  
Email:

**Re:** In the matter of the Receivership of VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND LORTAP ENTERPRISES LTD.

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_

Action No.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:

**MITSUBISHI HC CAPITAL CANADA INC**

Petitioner

- and -

**VIC VAN ISLE CONSTRUCTION LTD., VVI  
CONSTRUCTION LTD., AND LORTAP  
ENTERPRISES LTD.**

Respondent

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
VIC VAN ISLE CONSTRUCTION LTD., VVI  
CONSTRUCTION LTD., LORTAP ENTERPRISES LTD.

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**APPENDIX C**

**AUCTION SERVICES AGREEMENT – MCDOUGALL AUCTIONEERS LTD.  
(REDACTED)**

## AUCTION SERVICES AGREEMENT

THIS Auction Services Agreement dated for reference the 18 day of May, 2023 (the "**Agreement**")

MADE BETWEEN:

**BDO CANADA LIMITED**, in its capacity as receiver and manager of all the assets, undertakings, and properties of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd., and not in its personal capacity.

(hereinafter referred to as the "**Receiver**")

OF THE FIRST PART

AND:

**MCDUGALL AUCTIONEERS LTD.**

(hereinafter referred to as the "**Auctioneer**")

OF THE SECOND PART

**WHEREAS:**

- A. Pursuant to an Order of the Supreme Court of British Columbia granted on April 11, 2023, the Receiver was appointed as receiver and manager of all the assets, undertakings, and properties of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. (each a "**Company**") including the "**Assets**" listed in Schedule A hereto; and
- B. The Receiver wishes to retain the Auctioneer to sell the Assets, subject to the terms and conditions hereof, and the Auctioneer is willing to provide auction services to the Receiver, subject to the terms and conditions hereof;

**NOW THEREFORE THIS AGREEMENT WITNESS** that the Receiver and the Auctioneer agree as follows:

### 1. RETENTION OF THE AUCTIONEER

- 1.1 The Receiver hereby retains the Auctioneer to carry out, and the Auctioneer hereby agrees to carry out, a sales program and run a liquidation and auction with respect to the Assets on the terms and conditions set forth in this Agreement. The Auctioneer will determine the best way of selling the Assets with a view to maximizing the Receiver's realization on the Assets. For greater certainty, the term "**Auction**" used in this Agreement shall mean the sale of the Assets to be conducted by the Auctioneer on behalf of the Receiver, which may include an auction of the Assets conducted at the Premises (as defined below) or any combination of a private or public sale prior to or in place of an auction at the Premises (as defined below) or on the Internet.
- 1.2 The Auctioneer is acting only in its capacity as an independent contractor dealing with the Receiver and is otherwise not the Receiver's employee or assign, nor is it assuming the legal responsibilities, duties, or obligations of the Receiver or of a secured party. All sales of Assets shall be made by the Auctioneer as agent in fact for the Receiver. Title to the Assets shall remain with the applicable Company through to the completion of the Auction

contemplated by this Agreement, The Auctioneer will not, and has no authority to, incur any liability or obligation on behalf of the Receiver, unless otherwise specifically authorized and approved by the Receiver.

**2. PAYMENT OF NET MINIMUM GUARANTEE, DISTRIBUTION OF SALE PROCEEDS, AND BUYER'S PREMIUM**

- 2.1 The Auctioneer shall pay to the Receiver by certified cheque, bank draft or wire transfer, as directed by the Receiver in its sole discretion, a non-refundable net minimum guarantee in the amount of \$ [REDACTED] (the "**Net Minimum Guarantee**"), which amount shall be net of all provincial and federal sales taxes which for greater certainty shall be collected and remitted by the Auctioneer, for the right to sell the Assets. For greater certainty, if the Assets are not sold through the Auction for any reason other than a termination under section 9.1(c) of this Agreement, or Sale Proceeds (as defined below) are less than the Net Minimum Guarantee, the Net Minimum Guarantee shall nonetheless be payable by the Auctioneer to the Receiver without prejudice to any rights or remedies the Receiver may have in law or under this Agreement in connection with any default of the Auctioneer.
- 2.2 The Auctioneer shall track and manage all proceeds of the sale of the Assets (the "**Sale Proceeds**"). After sufficient Sale Proceeds have been collected from the sale of the Assets to first pay the Net Minimum Guarantee (or to reimburse Auctioneer for the payment of the Net Minimum Guarantee), for each dollar of Sale Proceeds above the Net Minimum Guarantee the Auctioneer shall be entitled to be paid each dollar of Sale Proceeds in an amount not to exceed \$ [REDACTED] (the "**Auctioneer's Fee**").
- 2.3 Any additional Sale Proceeds above the Net Minimum Guarantee and the Auctioneer's Fee (the "**Overage**") shall be allocated and paid out as follows:
- (a) 98% of the Overage to the Receiver (the "**Receiver's Overage**"); and
  - (b) 2% of the Overage to the Auctioneer.
- 2.4 The Net Minimum Guarantee and the Receiver's Overage shall be payable as follows:
- (a) The Auctioneer shall pay a non-refundable deposit of 25% on account of the Net Minimum Guarantee within three (3) business days of the Receiver's acceptance of this Agreement;
  - (b) Unless otherwise agreed to in writing by the Receiver and the Auctioneer, the Auctioneer shall pay to the Receiver the balance of the Net Minimum Guarantee on the earlier of i) four (4) business days prior to the Auction, or ii) June 23, 2023; and
  - (c) The Auctioneer shall pay to the Receiver the Receiver's Overage within fourteen (14) days of the completion of the Auction.
- 2.5 The Auctioneer shall be entitled to charge and retain for its own account a reasonable and customary buyer's premium (the "**Buyer's Premium**") on all purchased Assets, which Buyer's Premium shall not exceed fifteen (15%) percent. Any such Buyer's Premium shall not be considered Sale Proceeds and shall not be subject to the terms of section 2.2 of this Agreement.
- 2.6 The Auctioneer shall be responsible for the payment of all direct and indirect costs and expenses incurred by the Auctioneer and/or the Auctioneer's agents or employees in



connection with the exercise of its rights and obligations under this Agreement including, without limitation, the sale of the Assets and the conduct of the Auction, including, without limitation, all costs and expenses associated with the advertising and sale of the Assets, refurbishing and cleaning of the Assets, and set up and checkout at the Auction.

- 2.7 Notwithstanding section 2.6 of this Agreement, the Auctioneer will not be responsible for the following costs, claims, or liabilities, even if such are payable;
- (a) lease payments to third parties under any leases of the Assets;
  - (b) any pre-existing environmental costs;
  - (c) any payments to third parties or legal costs associated with dealing with liens against the Assets; and,
  - (d) any product warranties, conditions, or liabilities, including without limitation those set forth in the *International Sale of Goods Contracts Convention Act (Canada)*.
- 2.8 Upon receipt of an order of the Court referenced in section 8.1 herein, the Receiver shall be entitled to release the deposit referenced in 2.4(a) from trust and use such proceeds to fund the costs and expenses of the receivership proceedings as the Receiver sees fit.

### 3. THE AUCTION

- 3.1 The Receiver shall deliver to the Auctioneer a copy of all reasonably requested pertinent documents that are in the possession of the Receiver, if any, relating to the Assets, including, without limitation, any documents of title, operating manuals, warranties, and all documents respecting registrations to the extent they are in the Receiver's possession.
- 3.2 The Receiver shall provide, or make commercially reasonable efforts to provide, to the Auctioneer and its agents, employees and representatives, reasonable access to the Assets located at 96 Cartier St., Revelstoke, BC V0E 2S0 and 1300 Powerhouse Road, Revelstoke, BC, V0E 2S1 (the "**Premises**") for the purpose of conducting an Auction until July 15, 2023, or such later date as agreed by the parties hereto (the "**General Deadline**"), for the purposes of showing the Assets to prospective purchasers, preparing for and conducting the Auction, completing all sales, removing the sold Assets upon their sale, and cleaning up the Premises to a reasonable neat and tidy condition for re-leasing. The Auctioneer shall not be responsible for the cost, applicable rent, or the supply of utilities to the Premises including, without limitation, gas, water, heat, and hydro, and for the maintenance of insurance coverage on the Premises and Assets.
- 3.3 The Auctioneer shall sell the Assets on an "as is, where is" and "all sales are final" basis to the highest bidder, without any representations of any kind or nature whatsoever, including as to merchantability or fitness, and without warranty or agreement as to the condition of such Assets. Neither the Receiver, nor the Auctioneer, have made nor shall make, vis-a-vis any third-party purchasers, any representations, conditions, or warranties, with respect to the Assets. For greater certainty, the Receiver and Auctioneer agree that there are no terms or conditions whatsoever, whether expressed, implied, statutory, or otherwise with respect to the Assets, or any of them, or any other matters whatsoever in any way related to the subject matter of this Agreement, other than as expressly provided for in this Agreement. The Receiver specifically acknowledges that the Auctioneer is acting solely in the capacity of Auctioneer for the Receiver and has no knowledge with respect to the fitness or usability of the Assets.



- 3.4 The Auctioneer is authorized to accept any reasonable means of payment for the Assets sold provided it is in immediately available funds,
- 3.5 Upon completion of the Auction contemplated hereby, the Auctioneer shall oversee the removal or preparation of the removal of the Assets from the Premises in an orderly and professional manner in accordance with industry practices. Any third-party costs or expenses incurred in connection with the storage of the Assets on the Premises shall not be the responsibility of the Auctioneer. The Auctioneer shall be responsible for the clean-up of the Premises upon the removal of the Assets from the Premises unless any costs of clean-up are required to be incurred because of pre-existing conditions revealed by the removal of the Assets from the Premises. The Auctioneer shall assist the Receiver with the removal and disposal of any toxic or hazardous waste, or environmental pollutants found on or about the Assets or the Premises at the expense of the Receiver.

#### **4. DUTIES OF AUCTIONEER**

- 4.1 The Auctioneer shall at its own cost and expense carry out the Auction in an orderly and professional manner, in accordance with industry practices, including by, without limitation:
- (a) overseeing the liquidation and disposal of the Assets, including, without limitation, the carrying out of and the managing of all aspects of the on-site preparation and organization of the Assets for sale, obtaining any permits or licenses necessary to carry out the Auction, and mobilizing a team of personnel, including certified professional tradespeople where necessary, to carry out the foregoing tasks;
  - (b) repairing or causing the repair, by certified professional tradespeople and workers, of any fixtures, improvements, or ancillary structures located on the Premises that may become damaged through preparation and organization of the Assets for sale, and the remediation of the Premises to a condition substantially similar as it had been prior to the Auction;
  - (c) organizing and managing site visits and inspections of the Assets by potential bidders;
  - (d) enabling on-site and real-time online bidding on the day of the Auction;
  - (e) providing and supervising fully qualified and experienced personnel, including without limitation all managerial, labour, accounting and Auction day personnel, who will prepare for and sell the Assets in accordance with the terms of this Agreement;
  - (f) selling the Assets for cash or other immediately available funds to the highest bidder(s) on an "as is, where is" and "all sales are final" basis and in accordance with the terms of this Agreement;
  - (g) charging and collecting from all purchasers any purchase price together with all applicable taxes in connection therewith;
  - (h) promptly paying to the applicable authority all provincial sales tax (if applicable), goods and services tax, and any other tax resulting from any sale transaction entered into by the Auctioneer with respect to any of the Assets and confirming such payment to the Receiver;

- (i) preparing any reporting forms, certificates, reports and other documentation required in connection with the payment of applicable sales taxes to the appropriate taxing authorities and processing all of the foregoing on behalf of the Receiver;
- (j) providing the Receiver within thirty (30) days of the completion of the Auction with reporting and reconciliation of accounting information and detailed post-Auction settlement in a form satisfactory to the Receiver acting reasonably. With such accounting, the Auctioneer shall also deliver any funds due and payable to the Receiver under this Agreement;
- (k) removing sold Assets from the Premises within fourteen (14) days of the completion of the Auction unless otherwise agreed in writing by the Receiver; and
- (l) providing such other related service deemed necessary or prudent by Receiver and Auctioneer under the circumstances presented.

## **5. REPRESENTATIONS, WARRANTIES, AND CONDITIONS**

5.1 The Receiver represents and warrants to the Auctioneer that, subject to the granting of the Approval Order (as defined below), it has good and sufficient power and authority to enter into this Agreement and to complete the transactions contemplated by this Agreement.

5.2 The Auctioneer represents, warrants, and acknowledges to the Receiver that:

- (a) the Auctioneer is a corporation duly incorporated, organized and subsisting under the laws of the Province of Saskatchewan;
- (b) the Auctioneer has good and sufficient power and authority to enter into this Agreement and to complete the transactions contemplated by this Agreement;
- (c) this Agreement constitutes a valid and legally binding obligation of the Auctioneer, enforceable against the Auctioneer in accordance with its terms;
- (d) the Auctioneer has conducted its own due diligence, independent inspection, and investigation respecting the Assets and is satisfied with the Assets in all respects.
- (e) the Auctioneer will, prior to conducting any sales pursuant to this agreement, be registered under Part IX of the *Excise Tax Act* (Canada) and shall have all necessary registrations and authority to collect, report and remit any applicable taxes on or with respect to any sale of any Assets by the Auctioneer pursuant to this agreement, in all applicable jurisdictions; and
- (f) the Auctioneer has not jointly elected with the Receiver pursuant to section 177(1.3) of the *Excise Tax Act* (Canada); and
- (g) the Auctioneer holds all required permits and licenses required to perform its obligations under this Agreement, including registration as an extra-provincial company pursuant to the laws of British Columbia.



## 6. RISK OF LOSS, INSURANCE

- 6.1 The Receiver shall be responsible for loss or damage to the Assets, other than loss or damage arising because of the negligence of the Auctioneer, its agents or employees, until the earlier of (a) the removal of the Assets from the Premises by a purchaser or (b) receipt by the Receiver of the Sale Proceeds attributable to the applicable Assets (the "Transfer Date").
- 6.2 In the event of material damage to, or destruction of, the Assets or any part thereof, prior to the Transfer Date, the Auctioneer may reduce the Net Minimum Guarantee, by notice to the Receiver, by an amount equal to the cost of repair, or, if the relevant assets are destroyed or damaged beyond repair, by an amount equal to the replacement cost of the assets forming part of the Assets that have been materially damaged or destroyed, and complete the transaction contemplated under this Agreement, provided that the Receiver must agree to the amount of any reduction to the Net Minimum Guarantee.
- 6.3 Any insurance proceeds or other compensation proceeds paid or payable with respect to Assets that have been damaged but not materially damaged and/or destroyed, prior to the Transfer Date, will be assigned or paid by the Receiver to the Auctioneer, and the Net Minimum Guarantee will be reduced by the cost of repair or replacement to the extent that any such insurance or other proceeds do not compensate for the repair or replacement costs of the damaged Assets, provided that the Receiver must agree in writing to the amount of any reduction to the Net Minimum Guarantee.
- 6.4 The Auctioneer will maintain insurance, and will provide to the Receiver with proof of insurance, with respect to any liability which could flow from the activities of the Auctioneer, its agents, or employees, naming the Receiver as beneficiary of such insurance, providing for coverage of not less than \$5,000,000 per occurrence and otherwise in a form satisfactory to the Receiver acting reasonably.

## 7. INDEMNITY

- 7.1 The Auctioneer shall and hereby agrees to defend, indemnify, and hold harmless the Receiver and its officers, directors, agents, employees and principals from and against any and all known or unknown losses, damages, liabilities, claims, actions, judgments, penalties, fines, court costs and legal or other expenses, on a solicitor and own client basis, which the Receiver may incur as a direct or indirect consequence of: (a) negligent or intentional acts or omissions of Auctioneer or its agents, employees, representatives and principals in connection with the sale or the removal of the Assets from the Premises; and/or (b) the material breach by Auctioneer of any of its representations, warranties or other obligations under this Agreement and/or (c) any claims asserted by Auctioneer's supervisors, employees, or agents, including Auctioneer's employees' or agents' payroll claims (wage claims, claims for taxes required to be withheld from wages, social security, etc.), or unemployment compensation claims.
- 7.2 The Auctioneer shall indemnify and hold the Receiver harmless, on a solicitor and own client basis, from any and all demands, liabilities or claims, including, but not limited to, fines, penalties, losses, costs and expenses, which the Receiver may sustain, incur or be subject to, arising out of, or by reason of, any failure by the Auctioneer to collect, pay or remit any applicable taxes under, or in accordance with, the provisions of the *Excise Tax Act* (Canada) in relation to the sale of the Assets in accordance with the Auction (including without limiting the generality of the foregoing in respect of the Buyer's Premium described in Section 2.5 of this Agreement).

## 8. CONDITION PRECEDENT

- 8.1 It is a condition precedent of this Agreement that the Court will have issued prior to the Auction an order authorizing the Receiver to (a) retain the Auctioneer on the terms set forth herein; (b) pay the Auctioneer its compensation on the terms set forth herein without further order of this Court; (c) enter into and consummate the transactions set forth herein, and (d) transfer title to the Assets to any purchasers free and clear of liens, claims, and encumbrances.

## 9. TERMINATION

- 9.1 This Agreement may only be terminated:

- (a) by the mutual written consent of the Receiver and the Auctioneer;
- (b) by the Receiver by written notice to the Auctioneer:
  - (i) if there: has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Auctioneer under this Agreement, which breach, inaccuracy in or failure to perform shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting party; or
  - (ii) if there has been a failure by the Auctioneer to pay to the Receiver the balance of the Net Minimum Guarantee referenced in section 2.4(b) herein, and such failure to perform continues uncured for one (1) business day; or
  - (iii) if any representation made by Auctioneer proves untrue in any material respect; or
  - (iv) the Auction is not completed by the General Deadline, or such other deadline as agreed the Receiver agrees to in writing.
- (c) by the Auctioneer by written notice to the Receiver:
  - (i) if there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Receiver under this Agreement, which breach, inaccuracy in or failure to perform shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting party; or
  - (ii) if any representation made by the Receiver proves untrue in any material respect.

(each a "**Termination Event**")

- 9.2 In the event of termination of this Agreement in accordance with Section 9.1(b), this Agreement shall forthwith become of no further force or effect, and there shall be no liability on the part of any party hereto except: (a) as set for in Article 2, Section 3.5, Article 7, and this Article 9; and (b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.
- 9.3 In the event of termination of this Agreement in accordance with Section 9.1(a) or (c), this Agreement shall forthwith become of no further force or effect, and there shall be no



liability on the part of any party hereto except: (a) as set forth in Article 2, Section 3.5, Article 7, and this Article 9; and (b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

**10. FORCE MAJEURE**

10.1 Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fires, strikes, floods, adverse weather that has the potential to injure persons or damage property, acts of war, terrorism, riot, or public disorder, acts of God, lawful acts of public authorities, or electronic failures and internet service provider disruptions.

**11. MISCELLANEOUS**

11.1 All references to currency in this Agreement are to lawful currency of Canada.

11.2 If the doing of any act pursuant to this Agreement falls on a day on a bank holiday or weekend, then the time for the doing of such act shall be deemed to be the next day that is not a bank holiday or weekend.

11.3 Any notice, request, instruction, or other communication to be given hereunder by any party to the other shall be in writing and effective when delivered by courier, registered mail, or electronic mail to the addresses set forth as follows:

**To the Receiver:**

BDO Canada Limited  
1100 Royal Centre  
1055 West Georgia Street  
Vancouver, BC  
V6E 3P3  
Attention: Chris Bowra  
Email: cbowra@bdo.ca

**With a copy to:**

Miller Thomson LLP  
700 – 9<sup>th</sup> Avenue S.W.  
Suite 3000  
Calgary, AB T2P 3V4  
Attention: James W. Reid  
Email: jwreid@millerthomson.com

**The Auctioneer:**

McDougall Auctioneers Ltd.  
610 North Service Rd.  
Emerald Park, SK S4L 3G7  
Attention: Chad Guay  
Email: chad.g@mcdauktion.com

A party may from time to time change its address for notice by giving written notice of such change to the other party.

- 11.4 No waiver by either party of any of the conditions contained in this Agreement or of any breach of any of the covenants contained in this Agreement shall have effect or be binding upon that party unless expressed in writing and any waiver so given shall extend only to the particular condition or breach so waived and shall not limit or affect any rights with respect to any other condition or breach or any future breach.
- 11.5 This Agreement and the attached schedules constitute the entire agreement between the parties relating to the subject matter hereof and supersedes all prior proposals, communications, and agreements, whether written or oral.
- 11.6 This Agreement may be amended or modified only by an instrument in writing executed and delivered by the parties hereto subsequent to the date hereof.
- 11.7 The parties covenant to execute such further documents and do such further acts as may be required to implement the terms of this Agreement.
- 11.8 All stipulations in this Agreement as to time are strictly of the essence.
- 11.9 Neither the Receiver nor the Auctioneer shall assign this Agreement without the express written consent of the other. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
- 11.10 This Agreement shall be governed by the laws in effect in the Province of British Columbia and the parties hereby attorn to the jurisdiction of the Courts of that Province,
- 11.11 This Agreement may be executed in counterparts by the parties hereto and executed counterparts may be delivered by electronic mail and such execution and delivery shall be valid for all intents and purposes and the executed counterparts shall together form one document.

EXECUTED at Vancouver, BC, this 18 day of May, 2023.

**MCDUGALL AUCTIONEERS LTD.**

Per: 

Name: Chad Guay

Title: Vice President

I have the authority to bind the corporation

**BDO CANADA LIMITED, in its capacity as receiver and manager of all the assets, undertakings, and properties of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd., and not in its personal capacity.**

Per: 

Name: Chris Bowra

Title: Vice President

I have the authority to bind the corporation

**SCHEDULE A  
THE ASSETS**



Vic Van Isle Construction Ltd.  
List of Equipment

Year	Make	Model	Serial Number	Description
1900	Baron	RB-32		Other Concrete Equipment
2014	Big Tex	140A-20	16VFX2020E4328106	Tag-Along Equipment Trailers
2014	Boscaro	C-99N	141511	Concrete Buckets
2012	Boscaro	C-99N	121350	Concrete Buckets
1900	Boscaro	A-80D	113188	Concrete Buckets
2010	Caterpillar	320D L	CAT0320DVDFB00535	45,000-74,999 Lb Excavators
2018	Caterpillar	GP25N	AT35A05918	0-19,999 Lb Pneumatic Tire Forklift Trucks
2003	Caterpillar	252 (Legacy)	CAT00252HFDG01573	1,100-2,999 Lb Skid Steer Loaders
2013	Chevrolet	Express 1500	1GNSHBF47D1147852	Passenger Vans
2006	Chevrolet	Silverado	2GCEK13T36127125	
2000	CLARK	CGP40	CGP460L-0073-9518FB	0-19,999 Lb Cushion Tire Forklift Trucks
2011	CLARK	TMX20	TMX250-2613-9597	Electric Forklift Trucks
2016	Dynapac	LG 504	BGF104184	Plate Compactors
2006	Dynapac	LG 500	35003876	Plate Compactors
2006	Dynapac	LG 500	35004227	Plate Compactors
2007	Dynapac	LG 500	35006085	Plate Compactors
2017	Dynapac	LG 504	BGF118759	Plate Compactors
2010	Dynapac	LT 6004	76109531	Tampers And Rammers
2010	Dynapac	LT 6004	76109521	Tampers And Rammers
	ESAB	EMP 235ic Welder		welder
2014	Ford	F-250 (Crew)	1FT7W2B68EEA36779	Pickup Trucks
2011	Ford	F-350 (Crew)	1FT8W3B63BEB34544	Pickup Trucks
2015	Ford	F-250 (Crew)	1FT7W2B61FEB97721	Pickup Trucks
2008	Ford	F-350 (Crew)	1FTWW31R48EB50151	Pickup Trucks
2003	Ford	F-250	1FTNX21L83EC19253	Flatbed And Stakebed Trucks
1998	Ford	E-150	1FTRE1425WHB75770	Passenger Vans
2011	Ford	F-150 (Crew Lariat)	1FTFW1ET2BFB74170	Pickup Trucks
1994	Ford	L9000	1FDYW90L2RVA31827	Flatbed And Stakebed Trucks
2015	Ford	F350	VIN ending in 43764	Platinum super duty
1900	Fred	Fume Extractor	522417-1	Welding Accessories
1900	Frost Fighter	IDF350 (LP/NG)	11120333PN	Heaters
1900	Frost Fighter	IDF350 (LP/NG)	11040083PN	Heaters
1900	Frost Fighter	IDF350 (LP/NG)	09010173PN	Heaters
1900	Frost Fighter	IDF350 (LP/NG)	11110173PN	Heaters
1900	Frost Fighter	IDF350-11 (Oil/Diesel)	11120333	Heaters
1900	Frost Fighter	IDF350-11 (Oil/Diesel)	11120343	Heaters
2001	Genie	S-125	S125-347	80-129 Ft Telescopic Booms
2007	Genie	GS-2032	GS3207-88219	19+ Ft Electric Scissor Lifts
2006	Genie	GS-2032	GS3206-81397	19+ Ft Electric Scissor Lifts
1900	Gensco	PFT38/30	10146	Other Equipment
2007	Gradall	544D-10	160032696	10,000-10,999 Lb Telehandlers
2008	Gradall	544D-10	160032663	10,000-10,999 Lb Telehandlers
2003	Gradall	544D	160002306	10,000-10,999 Lb Telehandlers
2013	Hino	338	2AYNF8JT8D3S13278	Van Trucks
	Hypertherm	Power Max 105 Plasma		
	Ingersoll Rand		358683UGP222	compressor
2008	IR Doosan	L6	393838UJRC45	Light Towers
2005	IR Doosan	P185 (T2/3)	4FVCBBAA45U358683	25-349 CFM Air Compressors
2000	IR Doosan	L6	309047UBK822	Light Towers
2005	John Deere	544J	DW544JP599132	110-189 HP Wheel Loaders

Vic Van Isle Construction Ltd.  
List of Equipment

Year	Make	Model	Serial Number	Description
2014	John Deere	624K	1DW624KTVEF661885	110-189 HP Wheel Loaders
1900	Karcher	HDS 4.0/20-4M		Pressure Washers
1900	L.B. White	TS080		8x Heaters
	Lincoln Electric	Stick Welder		welder
2016	Lode King	53 Ft TriA	2LDSD5337GE061689	Dropdeck (Stepdeck) Trailers
	Magnum	MMG75	931278	75 kwh Generator
2013	Magnum (Generac)	MMG35 F4	1308164	5-39 kW Diesel Generators
2016	Magnum Attachments	RHB-304	304H-H442	Breakers And Hammers
2005	Mantis (Tadano)	6010	60-154	Telescopic Crawler Cranes
	MOD U Blast	MBA-6-SPR	2575	
2009	Peterbilt	387	1XP7D49X29D784745	TA Truck Tractors
2001	Power Curber	5700B	120291	Concrete Paving Equipment
1900	Ridgid	535	351732	Other Equipment
1900	Shindaiwa	kWiet Power DGM60MK	D14101000169	40-149 kW Diesel Generators
1900	Shindaiwa	kWiet Power DGM60MK	D14101000189	40-149 kW Diesel Generators
1900	Sommers	SMGDP30	SP561018-169	5-39 kW Diesel Generators
1900	Stanley	HP-1 Pump	6311	Other Hydraulic Tools - Pump (x2)
1900	Star Industries	1360B		Forklift Truck Attachments
2006	Sterling	L9500	2FZHACV36AV32550	Flatbed Dump Trucks
2005	Sunrise	IW-88SD	359304	Machine Tools
2011	Terex	RL4000	RL411-2476	Light Towers
2011	Terex	RL4000	RL411-2461	Light Towers
2008	Terex	T120	T12008-000202	40-149 kW Diesel Generators
1900	Various	20 Ft Storage Container Of	BSBU2077596	0-39 Ft Storage Containers
2005	Various	8X20	CHAU101810-0	Static Office, Accommodation, Welfare Units
1900	Various	20 Ft Storage Container	FBXV1314048	0-39 Ft Storage Containers
1996	Various	20 Ft Storage Container	YMLU2535129	0-39 Ft Storage Containers
1900	Various	20 Ft Storage Container	POCU0024637	0-39 Ft Storage Containers
1900	Various	20 Ft Storage Container with various plumbing materials inside	CELU00000368	0-39 Ft Storage Containers
1900	Various	8 Ft Storage Container - sandblasters inside	CPIU 1765044	0-39 Ft Storage Containers
2005	Various	8X20	CIU2057641	Static Office Accommodation Welfare Units
1900	Victor	Thermal Arc Fabricator 211	L12210047AW1004200	Electric Welders
2005	Wabash	53 Ft TA	1JJV532W75L932445	Van Trailers
2012	Wacker Neuson	E 3000	20118169	Ground Heaters
2011	Wacker Neuson	DPU 6555HE	10092736	Plate Compactors
2013	Wacker Neuson	DPU 6555H	10252434	Plate Compactors
2017	Wacker Neuson	WP 1540A	10680671	Plate Compactors
				garbage bins
			GSTU6253948	40 ft. seacan
			BB4310	40 ft. seacan
				miscellaneous wheelbarrows
				miscellaneous fencing
				Miscellaneous items in seacans
		PY53-25		53 ft. trailer
			JLU204259	Seacan
				Miscellaneous plywood
				4 big tires
				insulated panels

Vic Van Isle Construction Ltd.  
List of Equipment

Year	Make	Model	Serial Number	Description
				miscellaneous inventory
				miscellaneous heaters
				miscellaneous wood inventory
				miscellaneous doors
				miscellaneous scaffolding



**Lortap Enterprises Ltd.**

**List of Equipment**

Year	Make	Model	Serial Number	Description
	Accu-Systems	HPJ4		CNC Dowel Machine
	Atlas Equipment	Kwik Bay	3612480300370	Hydraulic Scissor Lift
	Blum	M53.1053.CA	JP 00337	Hinge Boring Machine
2004	Blum	M51P1053.CAMI	GA 00291	Hinge Boring Machine
1986	Blum	M51.1053 CA	AD1674	Hinge Boring Machine
2001	Cantek	HB-900HA	11229	Band Resaw
2011	Cantek	J-168LH 16"	J16800161-10	Spiral Head Jointer
2002	Cantek	C12RS 12"	40221011	Glue Line Ripsaw
	Cantek	CM-626 26"	07B2057	Thickness Planer
2014	Cantek	CANJDT75	1405054	Automatic Dovetailer
2010	CaptiveAire	A5-D.2000-95		Make Up Air System
	Chinook	SDO-560	140	Horizontal Air Compressor
	Dayton	300 lbs		Air Beam Hoist
	Dayton	5PKF4		Metal Waste Bin
2004	DMC	Technosand K TCK 1350 M	SA/005088	Automatic Belt Sander
2006	Doosan	G25E	CX-06960	Forklift
2014	Doucet	DWM-36	2014-06-181	Drawer Clamp
1991	Doucet Machineries	SRH-30-8.5-72-36	91-06-130	Rotary Clamp Carrier
1991	Eagle	5360V2	PY9114272	Vertical Air Compressor
1991	Eagle	5360H2	PY 9114286	Horizontal Air Compressor
2006	Felder	F900	430.07.061.06	Tilting Spindle Shaper
1998	Felder	FD-250	40-10/035-98	Horizontal Mortiser
	Fleming Gray	C-2	524	Paint Shaker
2018	Ford	Transit 250	1FTYR2CM1JKB39143	Cargo Van
2017	Gannomat	Index 471L130	770.731	CNC Dowel Machine
	Gannomat	Injecta		Electronic Glue Injection App
2018	Gannomat	Concept 70 Eco	711.823	Case Clamp
	Garss			Hinge Boring Machine
	General	350	L2470	Table Saw
	General			Bandsaw
	General International	40-250M1	40256005	Spindle Shaper
	Grass			Boring machine
2006	Hofer	Koptronik	998	Case Clamp
	Holzher	6210 Cut 85	425/0-507 5004192	CNC Panel Saw
	Ingersoll Rand	SSR-EP25SE	KE1414U95186	Rotary Screw Air Compressor
2012	International	Terrastar	1HTJSSKKXCH614247	Flatbed And Stakebed Trucks
2008	Interstate Trailers	20 Ft TA	4RACS20288N061533	Tag-Along Utility Trailers
1999	Italpresse	Ideal		Cold Press
2004	Italpresse	R3/130	139650104	Glue Spreader
2000	Kaeser	TC31	1082	Compressed Air Dryer
2004	King	KC-40HC 21"	23D0414	Gearhead Milling Drilling Ma



Lortap Enterprises Ltd.  
List of Equipment

Year	Make	Model	Serial Number	Description
1993	King	KC-30PC 3/4"	115303	Gear Head Drill Press
	King Industrial	PDM-30	63H00274	drill press
	Mepla Mat	MM1500	13236/503	Hinge Boring Machine
	Miscellaneous wood			
2016	Morbidelli	Author M400 Cell	AA2/003780	CNC Machining Center
2004	Morbidelli	Author 430S	AL/007336	CNC Machining Center
2016	Nederman	NFP-S1000		Dust Collector
2016	Nederman	NFP-S1000		Dust Collector
	Progress	PMC-150	394	Edgesander
2016	SCM	Stefani MD AM	AH/006381	CNC Edgebander
2007	SCM	SI 350 E	AB/188918	Sliding Table Saw
2005	SCM	SI 300N	AB/172384	Sliding Table Saw
	SCM	SII6 SW	AB.42292	Sliding Table Saw
	SCM	T130 N	AB.12615	Spindle Moulder
2013	SCM	Olimpic K230	AB217085	Edgebander
2002	Trailmobile	53 Ft TA	2MN01JAH821000728	Van Trailers
	Various rolling racks			
	Velox		1300	
1983	Weinig	U 17 A	1383-2892	Moulder
1982	Weinig	R 930	912/1212	Profile Tool Grinder
2007	WorkRite	4000	4K586	Electronic Glue Welder
		Dust Collector		Lortap
		Extractor Fan		Lortap
				miscellenous plywood

**VVI Construction Ltd.****List of Equipment**

<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>Serial Number</b>	<b>Description</b>
2019	Caterpillar	262D	CAT0262DTDTB09575	1,100-2,999 Lb Skid Steer Loaders
2013	Genie	Z-45/25J	Z452513A-47333	40+ Ft Electric Articulating Booms
2011	Genie	Z-45/25J	Z452511A-40109	40+ Ft Electric Articulating Booms
2007	Hitachi	ZX200LC-3	HCM1U100A00219369	45,000-74,999 Lb Excavators
2019	Load Trail	16 Ft TriA	4ZEDT1632K1178887	End And Side Dump Trailers
2018	Load Trail	14 FT TA	4ZEDT1422J1149737	End And Side Dump Trailers
	HP	Designjet T3500		Plotter printer
	KIP	3000	Q106X13B(?)	Plotter printer
	Forest River	Cargo Mate Trailer	5NHUBLV27LB477635	Enclosed trailer
2007	Wells Cargo	16 FT TA	1W4200G2974065201	Tag-Along Utility Trailers

**APPENDIX D**  
**ASSET PURCHASE AGREEMENT – WOODY’S PROJECTS**



**ASSET PURCHASE AGREEMENT**

Between

**Woody's Projects, as Buyer**

and

**BDO Canada Limited, in its capacity as Court Appointed Receiver and Manager  
of Vic Van Isle Construction Ltd. and not in its personal or corporate capacity, as Seller**

Dated May 12 th \_\_\_\_\_, 2023

## INDEX TO SCHEDULES

Schedule 1	Transferred Assets
Schedule 2	Form of Approval Order

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## ASSET PURCHASE AGREEMENT

This Agreement is entered into as of May 12<sup>th</sup> \_\_\_\_\_, 2023, by and between [Buyer] (the "Buyer") and BDO Canada Limited, in its capacity as Court-appointed receiver of Vic Van Isle Construction Ltd. and not in its personal or corporate capacity (the "Seller").

**WHEREAS** the Seller desires to sell or otherwise transfer to the Buyer and the Buyer desires to purchase from the Seller, the right, title and interest of Vic Van Isle Construction Ltd. in the Transferred Assets.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound agree as follows:

### ARTICLE 1 DEFINITIONS

#### 1.1 Certain Defined Terms

As used in this Agreement, the following terms shall have the following meanings and grammatical variations of such terms shall have corresponding meanings:

"**Agreement**" means this asset purchase agreement, between the Seller and the Buyer, including all schedules and all amendments or restatements, as permitted.

"**Approval Order**" means an approval and vesting order from the Court in a form acceptable to the Buyer and the Seller, substantially in the form at Schedule 2.

"**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in Vancouver, British Columbia on which Canadian chartered banks are open for commercial banking business during normal banking hours.

"**Buyer**" has the meaning specified in the recitals to this Agreement provided that in the event the Buyer assigns its interest in accordance with the provisions of this Agreement to a nominee, the term "Buyer" will also include such nominee.

"**Closing**" means the closing of the transaction contemplated by this Agreement.

"**Closing Date**" has the meaning specified in Section 2.4.

"**Closing Documents**" means the documents referred to in Section 8.3 and 9.3 hereof.

"**Court**" means the Supreme Court of British Columbia.

"**Documents**" shall have the meaning specified in Section 13.4.

"**Excise Act**" means the *Excise Tax Act* (Canada).

"**Governmental Authority**" means any Canadian federal, provincial, municipal or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body or any other public agency.

"**Law**" means any Canadian federal, provincial, state, municipal, local or foreign statute, act, law, ordinance, regulation, rule, code, order, decree, judgment, policy, other requirement or rule of law, including the common law and its principles.

"**Licences and Permits**" means the licences and permits relating to the operation of the Transferred Assets.

"**Losses**", in respect of any matter, means all losses, claims, demands, proceedings, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter.

"**Person**" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.

"**Premises**" means:

- Attaphy Island off shore from Tofino
- 96 Cartier Street, Revelstoke, British Columbia legally described as:  
PID: 016-287-151  
Parcel A (SEE XD26998) Township 23 Range 2 West of the 6th Meridian  
Kootenay District Plan 10022; and
- 1300 Powerhouse Road, Revelstoke, British Columbia legally described as:  
PID: 009-514-325  
Lot 2, Section 26, Township 23, Range 2, W6M Kootenay District Plan 10022.

"**Purchase Price**" has the meaning specified in Section 2.2.

"**Taxes**" means any and all transfer taxes, goods and services taxes, harmonized sales taxes, value added taxes or license, registration and documentation fees and similar charges, but does not include income or disposition tax levied on the Seller arising by reason of the sale of the Transferred Assets.

"**Transferred Assets**" has the meaning specified in Section 2.1.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **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, then, unless otherwise specified, the party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency** - Unless otherwise specified, all references to money amounts are to lawful currency of Canada.
- (c) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (d) **Statutory References** - A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any



statute or regulation which amends, supplements or supersedes any such statute or any such regulation.

- (e) Time - Time is of the essence in the performance of the parties' respective obligations.
- (f) 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.
- (g) References - all references to Articles, Sections, Subsections, Exhibits or Schedules shall, unless stated to the contrary, mean Articles, Sections, Subsections, Exhibits or Schedules of this Agreement.

## ARTICLE 2 PURCHASE AND SALE OF ASSETS

### 2.1 The Transferred Assets

Subject to the terms and conditions of this Agreement, on the Closing Date the Seller shall sell, transfer, assign and convey to the Buyer all of the right, title and interest of the Seller, if any, in and to the assets as set out in Schedule "1" (collectively, the "**Transferred Assets**").

At the Closing Date, the Transferred Assets shall be transferred to and vested in the Buyer pursuant to the Approval Order on an "as is, where is" basis but otherwise free and clear of any liens, charges or encumbrances of any nature whatsoever, except permitted encumbrances, if any. The parties acknowledge and agree that the Seller shall make the Transferred Assets available to the Buyer effective on the Closing Date and by permitting the Buyer to take possession of the Transferred Assets the Seller shall not be required to consolidate the Transferred Assets in any one location.

### 2.2 Purchase Price

Exclusive of all Taxes, the aggregate purchase price (the "**Purchase Price**") payable by the Buyer to the Seller in consideration of the transfer of the Transferred Assets shall be [●\$20,000.00], subject only to the usual adjustments for deposits as and where applicable. The Purchase Price will be satisfied by the Buyer as follows:

- (a) as to the amount of [●\$3000.00], representing 15% of the Purchase Price as a deposit (the "**Initial Deposit**") shall be paid by wire transfer, money order, certified cheque or bank draft within at the time of delivery of this executed Agreement and shall be dealt with in accordance with Section 2.3; and
- (b) as to the balance, by payment on the Closing Date by wire transfer, money order, certified cheque or bank draft.

All Taxes payable in connection with the purchase and sale of the Transferred Assets shall be the responsibility of the Buyer and shall be paid as and when required by law in order to permit the consummation of the purchase and sale of the Transferred Assets as contemplated herein.

### 2.3 Initial Deposit

- (a) The Initial Deposit shall be provided by the Buyer to the Seller at the time of delivery of this executed Agreement and held by the Seller, in trust, in a non-interest bearing account and shall be:
  - (i) in the event the Closing occurs on or before the Closing Date, applied toward the Purchase Price in accordance with Section 2.2 and shall be released to the Seller or the Seller's counsel in immediately available funds;
  - (ii) forfeited on account of liquidated damages, and not a penalty, and be released from Trust and paid to the Seller in the event that the Closing does not occur on or before the Closing Date by reason of the Buyer's breach of its obligations hereunder and the Buyer shall remain liable for any losses suffered by the Seller as a result of such breach in excess of the Initial Deposit. The provision for payment of liquidated damages has been included because, in the event of termination of this Agreement as set out in this section 2.3(a)(ii) the actual damages to be included by the Seller can reasonably be expected to approximate the amount of liquidated damages caused for herein and because the actual amount of such damages would be difficult if not impossible to measure accurately; or
  - (iii) otherwise returned to the Buyer, if the terms of the Agreement are not accepted by the Seller within five (5) Business Days of it being reviewed by the Seller.

### 2.4 Closing

Upon the terms and subject to the conditions of this Agreement, the sale, transfer, conveyance and assignment of the Transferred Assets as contemplated by this Agreement shall take place on or before the tenth (10<sup>th</sup>) Business Day following the issuance of the Approval Order or such other day acceptable to both parties, at 10:00 a.m. Vancouver Time or at such other place or at such other time or on such other date as the Seller and the Buyer may mutually agree upon in writing (the "**Closing Date**"). The Closing Documents and Purchase Price shall be held in escrow until such time as the Seller informs the Buyer in writing that the Seller's Certificate, as defined in the Approval Order, has been filed with the Court.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Buyer as follows:

### 3.1 Authorization

The Seller has, or will have after obtaining the Approval Order and provided there is at the Closing Date no injunction or order prohibiting the Closing, all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder.

### 3.2 Seller Resident of Canada

The Seller is not a non-resident of Canada under the *Income Tax Act* (Canada).



## ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to the Seller as follows:

### 4.1 Organization

The Buyer is duly incorporated, validly existing and in good standing under the Laws of its incorporating jurisdiction.

### 4.2 Authorization

The Buyer has the corporate power and authority to execute and deliver this Agreement and the other documents and instruments contemplated herein or therein to which it is or will be a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the documents contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by the Buyer.

### 4.3 Execution and Delivery

This Agreement, and each of the other agreements, documents and instruments to be executed and delivered by the Buyer on or before the Closing, have been or will be duly executed and delivered by, and constitute the valid and binding obligations of the Buyer.

### 4.4 Validity, etc.

Neither the execution and delivery of this Agreement by the Buyer and the other documents and instruments contemplated hereby, the consummation of the transactions contemplated hereby or thereby, nor the performance of this Agreement and such other agreements in compliance with the terms and conditions hereof and thereof will (i) conflict with or result in any breach of the articles or by-laws of the Buyer or shareholders agreement or resolution of shareholders or directors or any Law applicable to the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, (iii) result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under any Law, governmental permit, license or order or any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument to which the Buyer is a party, or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Buyer.

### 4.5 Resident

As at the Closing Date, the Buyer is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada). The Buyer will be registered under the *Excise Act* and provide its GST number to the Seller at the Closing Date.

### 4.6 "As Is, Where Is"

Save and except as expressly provided herein, the Buyer acknowledges that the Transferred Assets are purchased on an "as is, where is" basis and without warranty and that it has inspected the Transferred Assets and will accept the same on the Closing Date in their state, condition and location existing as of the date of this Agreement, it being expressly understood that the Transferred Assets shall on the Closing Date be comprised of the assets as set out in Schedule "1" attached hereto.

Unless specifically stated in this Agreement, no representation, warranty or condition, whether statutory (including under the *Sale of Goods Act* (British Columbia)), express or implied, oral or written, legal, equitable, conventional, collateral or otherwise is being given by the Seller in this Agreement or in any instrument furnished in connection with this Agreement as to title, outstanding liens, description, fitness for purpose, merchantability, condition, quality, value, suitability, durability, compliance or non-compliance with environmental rules, regulations or legislative provisions, or marketability thereof or in respect of any other matter or thing whatsoever including, without limitation, the right, title and interest of the Seller, if any, therein and wherever all or part of the Transferred Assets are situate and all of the same are expressly excluded. The Buyer shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the transactions contemplated hereunder. Further, the Buyer confirms that it has relied entirely on its own inspection, due diligence and investigation in preparing and finalizing the Schedules attached hereto and acknowledges that the Seller has made no representations in respect thereof.

#### **4.7 Environmental Condition**

Without limiting Section 4.6 hereof in any way, the Buyer acknowledges that the Seller makes no representations or warranties, whatsoever, as to the existence or non-existence of urea formaldehyde insulation, asbestos, PCB's, radium, radon or radon progeny, or any other substances, liquids or materials, whether hazardous or toxic or not, which are or which may constitute on their own or together in combination with any other substance, contaminants or pollutants of any environment, including the natural environment. The Seller specifically makes no representation regarding the compliance of the Transferred Assets with any environmental regulation, whether federal, provincial or municipal or with respect to any rule, regulation, covenant or agreement whether statutory or non-statutory.

#### **4.8 Environmental Indemnity**

The Buyer shall indemnify the Seller and hold the Seller harmless from and against all losses, costs, damages, expenses and costs (including legal fees calculated as between a solicitor and his own client with a right to full indemnity) which the Seller may sustain, incur, be or become liable for by reason of or arising from anything done by the Buyer in relation to the Transferred Assets in contravention of environmental legislation or other Law including, without limitation, any clean-up, de-commissioning, restoration or remediation of the Transferred Assets.

### **ARTICLE 5 COVENANTS OF THE SELLER**

The Seller covenants and agrees with the Buyer as follows:

#### **5.1 Access**

During the period between the granting of the Approval Order and the Closing Date, the Seller shall furnish the Buyer and its representatives reasonable access to the Transferred Assets in the presence of a representative of the Seller, or such person as the Seller may designate, at all times during normal business hours, as well as such information within the possession or control of the Seller regarding the Transferred Assets, to the extent permitted by law, as the Buyer and its representatives may reasonably request and the Seller will use commercially reasonable efforts to cause its officers, employees, consultants and agents to cooperate fully with the Buyer and its representatives in connection with their review and examination of the Transferred Assets. By way of clarity, none of the Transferred Assets may be removed from the Premises until the Closing Date.



## 5.2 Approval Order

The Seller shall apply to the Court on notice to the Buyer for the Approval Order. The Seller will diligently pursue such application and will promptly notify the Buyer of the disposition.

## 5.3 Insurance

Until the time of the Closing, the Seller shall maintain in full force all policies and contracts of insurance which are now in effect (or renewals thereof) and under which it or any of the Transferred Assets are insured. At the request and expense of the Buyer, the Seller shall use commercially reasonable efforts to, subject to availability: (i) place such additional insurance on the Transferred Assets; and/or (ii) place such additional public liability and other insurance on the Transferred Assets as the Buyer may request.

## ARTICLE 6 COVENANTS OF THE BUYER

### 6.1 Goods and Services Tax

- (a) If the transaction contemplated hereunder shall be subject to Goods and Services Tax ("GST") levied pursuant to the *Excise Act* and/or Provincial Sales Tax ("PST") levied pursuant to the *Provincial Sales Tax Act* (British Columbia), then GST and/or PST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the *Excise Act*. The Seller is registered for GST purposes and its registration number is \_\_\_\_\_. The Seller is registered for PST purposes and its registration number is \_\_\_\_\_.
- (b) The Buyer shall indemnify and save harmless the Seller from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of GST and/or PST payable in respect of the transaction contemplated hereunder.
- (c) At the Closing, the Buyer shall provide the Seller with evidence satisfactory to the Seller, acting reasonably, of its federal goods and services tax registration number, its provincial sales tax registration number and shall indemnify the Seller for any liability for GST and/or PST, interest and costs arising in connection with this transaction.

### 6.2 Filings

The Buyer shall make all necessary filings and registrations in connection with this Agreement and the sale of the Transferred Assets and shall be solely responsible for the costs associated therewith.

### 6.3 Removal of Transferred Assets

The Buyer shall cause the Transferred Assets to be removed from the Premises no later than seven (7) Business Days after the Closing Date. The Buyer shall ensure that the Premises are left in a broom swept vacant possession and a state that would be acceptable for safe possession by a subsequent tenant in substantially the same state of repair as prior to the Closing Date, and acknowledges that they shall be liable for any costs required to repair or remediate the Premises.

**ARTICLE 7  
CONDITIONS TO THE OBLIGATIONS OF BOTH PARTIES**

The following condition is for the benefit of both the Seller and the Buyer and neither will be obligated to complete the relevant transaction unless the condition has been satisfied:

**7.1 Court Approval**

The Approval Order shall have been duly granted, and shall not have been stayed, reversed or dismissed as at the Closing Date. For greater certainty, expiration of the appeal period for the Approval Order shall not be a pre-condition of the Buyer's or Seller's obligation to complete the within transaction.

**ARTICLE 8  
CONDITIONS TO THE BUYER'S OBLIGATIONS**

The obligation of the Buyer to pay the Purchase Price on the Closing Date as outlined in Section 2.2, to perform its obligations under this Agreement and to consummate the other transactions contemplated hereby are subject to the satisfaction, on or before the Closing Date, of the following conditions each of which may be waived by the Buyer in its sole discretion:

**8.1 Representations and Warranties**

The representations and warranties of the Seller contained in Article 3 shall be true, correct and complete in all material respects at the time of the Closing Date with the same force and effect as if such representations and warranties were made at and as of such time.

**8.2 Performance**

The Seller shall have performed its obligations under this Agreement in all material respects.

**8.3 Closing Documents**

The Seller shall have delivered to the Buyer at or before the Closing the following documents:

- (a) a certified copy of the issued and entered Approval Order;
- (b) the executed Seller's Certificates; and
- (c) such other usual and customary documents for transactions of the nature set out in this Agreement as may be required by the Seller or the Buyer, each acting reasonably, necessary to complete the purchase and sale of the Transferred Assets contemplated by this Agreement.

**ARTICLE 9  
CONDITIONS TO THE SELLER'S OBLIGATIONS**

The obligation of the Seller to perform its obligations under this Agreement and to consummate the other transactions contemplated hereby is subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which may be waived by the Seller in its sole discretion:



### **9.1 Representations and Warranties**

The representations and warranties of the Buyer contained in Article 4 shall be true, correct and complete in all material respects at the time of the Closing with the same force and effect as if such representations and warranties were made at and as of such time.

### **9.2 Performance**

The Buyer shall have performed its obligations under this Agreement in all material respects.

### **9.3 Closing Documents**

The Buyer shall have delivered to the Seller balance of the Purchase Price and the following documents:

- (a) a certified copy of a resolution of the Board of Directors of the Buyer authorizing the consummation of the transactions contemplated herein;
- (b) a certificate of incumbency of the officers of the Buyer; and
- (c) such other usual and customary documents for transactions of the nature set out in this Agreement as may be required by the Seller or the Buyer, each acting reasonably, necessary to complete the purchase and sale of the Transferred Assets contemplated by this Agreement.

## **ARTICLE 10 ADDITIONAL AGREEMENTS**

### **10.1 Confidentiality - Buyer**

If the Closing fails to occur for whatever reason, thereafter, the Buyer agrees not to divulge, communicate or disclose, except as may be required by Law or for the performance of this Agreement, or use to the detriment of the Seller or for the benefit of any other Person or Persons, or misuse in any way, any confidential information of the Seller related to the Transferred Assets. In the event that the Buyer is required to divulge, communicate or disclose any such confidential information pursuant to any Law, the Buyer shall promptly provide written notice to the Seller of such requirement so that the Seller may seek a protective order or other appropriate remedy (in which case the Buyer will cooperate fully). If no such protective order or other remedy is obtained, the Buyer will disclose only that portion of such confidential information which it is advised by counsel it is legally required to disclose.

## **ARTICLE 11 INDEMNIFICATION**

### **11.1 Survival of Representations and Warranties**

All representations and warranties in Article 3 and Article 4, as given at the date hereof and restated at the Closing as provided for in Section 8.1 or Section 9.1, or in any instrument or document furnished in connection with this Agreement or the transactions contemplated hereby, shall survive the closing of the transaction contemplated herein and, notwithstanding any investigation at any time made by or on behalf of any party continue in full force and effect for a period of six (6) months from the Closing, provided that a claim for any breach of the representations and warranties contained in this Agreement, or in any instrument or document furnished in connection with this Agreement or the transactions contemplated hereby, that



involves fraud or fraudulent misrepresentation may be made at any time following the Closing, subject only to applicable limitation periods imposed by Law. All covenants and agreements contained herein shall survive until fully performed in accordance with their terms.

### **11.2 Buyer's Indemnification of the Seller**

In addition to the indemnity contained in Section 4.8, the Buyer shall indemnify, defend and hold harmless the Seller and its officers, directors, employees, agents and shareholders, and their respective successors and assigns from and against all Taxes payable in connection with the purchase and sale of the Transferred Assets.

## **ARTICLE 12 TERMINATION**

### **12.1 Termination**

This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date, as the case may be:

- (a) by mutual written consent of the Buyer and the Seller;
- (b) by the Buyer or the Seller if any court of competent jurisdiction or other Governmental Authority shall have issued an order, decree or ruling, or taken any other action specifically restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action is not stayed or dismissed prior to the Closing Date;
- (c) subject to 13.1, by the Buyer or the Seller if, on or before the Closing Date, a material part of the Transferred Assets has been removed from the control of the Seller by any means or process, or the Transferred Assets, or any part thereof, are redeemed; or
- (d) by the Buyer or the Seller if the conditions contained in Article 7, 8 and 9 are not satisfied or waived prior to the applicable date for satisfaction of such conditions.

### **12.2 Effect of Termination**

Notwithstanding the termination and abandonment of this Agreement pursuant to Section 12.1, the provisions of Section 10.1 of this Agreement shall survive and the provisions of Section 2.3 shall apply with respect to the Initial Deposit.

## **ARTICLE 13 MISCELLANEOUS**

### **13.1 Risk of Loss**

Up to the time of the Closing, the Transferred Assets shall be and remain at the risk of the Seller. If, prior to the time of the Closing, all or any material part of the Transferred Assets are destroyed or damaged by fire or any other casualty or shall be expropriated, the Seller shall have the first option to elect to terminate this agreement exercisable within twenty (20) Business Days from the date of such destruction, damage, casualty or expropriation by providing written notice (the "**Destruction Notice**") thereof to the Buyer and, upon such notice being given, this Agreement shall terminate and be of no further force or effect (save and except the provisions of Section 10.1) and the Seller shall return the Initial Deposit to the Buyer. Thereafter, the Buyer shall have

the option, exercisable by notice in writing given within five (5) Business Days of the later of the Buyer receiving notice in writing from the Seller of such destruction, damage, casualty, or expropriation of the Destruction Notice:

- (a) to complete the purchase without reduction of the Purchase Price, in which event the Initial Deposit shall be applied to the Purchase Price, in accordance with Section 2.2, and all proceeds of insurance or compensation for expropriation shall be payable to the Buyer and all right and claim of the Seller to any such amounts not paid by the time of the Closing shall be assigned by the Seller to the Buyer; or
- (b) of terminating this Agreement and not completing the purchase, in which case all obligations of the Buyer and the Seller hereunder, other than those pursuant to Section 10.1, shall terminate and the Initial Deposit shall be returned to the Buyer.

### 13.2 Notices

All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as such party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by e-mail transmission, or (iii) sent by recognized overnight courier.

If to the Buyer:

\_Woody'sProjects\_\_\_\_\_

Attention: \_Kathryn Parr\_\_\_\_\_

-Lewis Hendrickson

E-mail: \_\_kathryn.parr@gmail.com\_\_\_\_\_

Hendricksonlewis3@gmail.com

If to the Seller:

BDO Canada Limited  
Royal Centre, 1055 W Georgia St Unit 1100, Vancouver, BC V6E 3P3

Attention: Chris Bowra

E-mail:           cbowra@bdo.ca

With copy to

Miller Thomson LLP  
700 9 Ave SW #3000  
Calgary, AB T2P 3V4

Attention:       James Reid

E-mail:           jwreid@millerthomson.com

All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party in accordance with this Section 13.2, (ii) if made by e-mail transmission, at the date sent, if before 5:00 pm Vancouver Time, and otherwise the next business day, or (iii) if sent by overnight courier with guaranteed next day delivery, on the next Business Day following the day such notice is delivered to the courier service.

### **13.3 Further Assurances**

At any time up to the discharge of BDO Canada Limited as receiver and manager, and from time to time after the date hereof each of the parties hereto, at the reasonable request and expense of the other party hereto, will execute and deliver such other instruments of sale, transfer, conveyance, assignment, confirmation and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign to the Buyer and to confirm the Buyer's title to the Transferred Assets and to effectuate the transactions contemplated herein.

### **13.4 Entire Agreement**

This Agreement together with the Schedules hereto and the other documents executed in connection herewith or referred to herein (together, the "**Documents**") embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Documents shall affect, or be used to interpret, change or restrict, the express terms and provisions of the Documents.

### **13.5 Modifications and Amendments**

The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto and, where same may be required, by order of the Court in the Proceedings.



### **13.6 Waivers and Consents**

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

### **13.7 Assignment**

Except as set out herein, neither this Agreement, nor any right hereunder, may be assigned by any of the parties hereto without the prior written consent of the other party. Except as set out herein, the assignment of this Agreement, or any portion thereof, shall not, in any way, release the Buyer from its obligations hereunder. The Buyer shall, within five (5) Business Days of the execution of this Agreement by the Seller, provide a written direction to the Seller or its solicitors as to the company or companies which shall take title to the Transferred Assets to the extent that the Buyer is not taking title to same, or any portion thereof, herein.

### **13.8 Parties in Interest**

This Agreement shall be binding upon and enure solely to the benefit of each party hereto and their permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto, and no Person or entity shall be regarded as a third-party beneficiary of this Agreement.

### **13.9 Governing Law**

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the Laws of the Province of British Columbia and the federal laws of Canada applicable therein, without giving effect to the conflict of Law principles thereof.

### **13.10 Jurisdiction and Service of Process**

Any legal action or proceeding with respect to this Agreement may only be brought in the Court. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the Court. Nothing in this Section shall affect the rights of the parties to commence any such action in any other forum or to serve process in any such action in any other manner permitted by Law.

### **13.11 Interpretation**

The parties hereto acknowledge and agree that: (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; and (ii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

### **13.12 Headings and Captions**

The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect, or be considered in construing or interpreting the meaning or construction of any of the terms or provisions hereof.

### **13.13 Enforcement**

The Buyer acknowledges and agrees that the rights acquired by the Seller hereunder are unique and that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by the Buyer were not performed in accordance with its specific terms or were otherwise breached. Accordingly, in addition to any other remedy to which the Seller hereto is entitled at Law or in equity, the Seller hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the Buyer and to enforce specifically the terms and provisions hereof in the Court.

### **13.14 Expenses**

Each of the parties hereto shall pay its own fees and expenses (including the fees of any lawyers, financial advisors, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

### **13.15 No Broker or Finder**

Each of the parties hereto represents and warrants to the other parties that no broker, finder or other financial consultant has acted on its behalf in connection with this Agreement or the transactions contemplated hereby in such a way as to create any liability on the other. Each of the parties hereto agrees to indemnify and save the other harmless from any claim or demand for commission or other compensation by any broker, finder, financial consultant or similar agent claiming to have been employed by or on behalf of such party and to bear the cost of legal expenses incurred in defending against any such claim.

### **13.16 Publicity**

The Buyer shall not, at any time, issue any press release or otherwise make any public statement with respect to the execution of, or the transactions contemplated by, this Agreement without the prior written consent of the Seller, such consent not to be unreasonably withheld.

### **13.17 Counterparts**

This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement may be made and evidenced by facsimile, or electronic transmission.



**IN WITNESS WHEREOF**, the Buyer and the Seller have executed this Agreement as of the day and year first written above.

**BDO Canada Limited in its capacity as  
Court Appointed Receiver and Manager  
of Vic Van Isle Construction Ltd. and  
not in its personal or corporate capacity**

Per: Chris Bowra  
Name: Chris Bowra  
Title: Vice President

**[Buyer]**

Per: K. Parr  
Name Kathryn Parr  
Title: Director  
I/We have the authority to bind the corporation



**SCHEDULE "1"**  
**TRANSFERRED ASSETS**

All VVI / Vic Van Isle equipment located on Attaphy Island not limited to\_

1. 2012 F350
  2. 2007 Gradall 10,000 lb telehandler
  3. Tex trailer
  4. Misc scaffolding
-

**SCHEDULE "2"**  
**FORM OF APPROVAL ORDER**