

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-057679-199

SUPERIOR COURT  
Commercial Division

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

**INVESTISSEMENT QUÉBEC**

**Applicant / Secured Creditor**

- and -

**FORTRESS GLOBAL ENTERPRISES INC.**

- and -

**FORTRESS SPECIALTY CELLULOSE INC.**

- and -

**FORTRESS BIOENERGY LTD.**

- and -

**FORTRESS XYLITOL INC.**

- and -

**9217-6536 QUÉBEC INC.**

**Debtors**

- and -

**DELOITTE RESTRUCTURING INC.**

**Monitor**

- and -

**HYDRO-QUÉBEC**

**Impleaded Party**

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**APPLICATION FOR THE ISSUANCE OF AN ORDER  
ESTABLISHING A CHARGE IN FAVOUR OF HYDRO-QUEBEC  
(Section 11 of the *Companies' Creditors Arrangement Act*)**

**TO THE HONOURABLE MARIE-ANNE PAQUETTE OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE  
APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:**

## 1. ORDER SOUGHT

1. Investissement Québec ("IQ"), in its capacity as interim lender and secured creditor of the Debtors, hereby seeks the issuance of an order establishing a priority charge over the property of the Debtors in favour of Hydro-Québec ("HQ") in the amount of \$840,000 (the "HQ Charge").
2. As will be further discussed below, the establishment of the HQ Charge is intended to substitute the guarantees which Fortress (as defined below) has contractually agreed to provide to HQ pursuant to the certain agreements previously entered between such parties, and, ultimately, Fortress to continue to generate revenues from the sale of electricity produced from its Cogeneration Facility (as defined below) to HQ, for the Debtors' benefit, as well as that of their respective creditors and stakeholders.

## 2. PROCEDURAL BACKGROUND

3. On December 13, 2019, the Applicants, in their capacity as principal secured creditors of the Debtors, filed an application in respect of the Debtors pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), entitled *Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order, a Receivership Order and a Claims Process Order* (the "Initial Application").
4. On December 16, 2019, the Initial Application was partially granted by the Honourable Marie-Anne Paquette, j.c.s., who rendered on the same day, as appears from the Court record:
  - (a) a first day initial order (the "First Day Order"); and
  - (b) an order appointing Deloitte Restructuring Inc. as receiver to the Debtors for the sole purpose of allowing their respective employees from benefiting from those payments provided under the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1).
5. Pursuant to the First Day Order, the Court ordered, *inter alia*, that:
  - (a) all claims against the Debtors, their properties and their directors and officers were stayed (the "Stay") until December 26, 2019 (the "Stay Period"); and
  - (b) the Debtors were authorized to borrow from IQ an amount of up to \$1,000,000 on the terms and conditions of the Interim Financing Term Sheet filed as Exhibit R-18 of the Initial Application (the "Interim Financing Term Sheet"), which was to be secured by a super-priority charge and security over the assets of the Debtors in the aggregate amount of \$1,200,000 (the "Interim Lender Charge").
6. The First Day Order also provided that a return hearing would take place on December 26, 2019 at 12:00 PM by way of telephone conference, the purpose of which was namely to:
  - (a) extend the Stay Period until January 10, 2020; and

- (b) increase the amount which the Debtors were authorized to borrow under the Interim Financing Term Sheet (as well as the related Interim Lender Charge) in order to finance the Debtors' ongoing costs and expenses until January 10, 2020, if necessary.
7. On December 20, 2019, the Applicants filed a motion requesting the issuance of an Amended First Day Order which was granted on December 26, 2019, as appears from the Court record, and which provided for, *inter alia*:
- (a) an extension of the Stay Period until January 10, 2020;
  - (b) the authorization for the Debtors to borrow from IQ an amount of up to \$1,500,000 under the terms and conditions set forth in the Interim Financing Term Sheet, to be secured by an Interim Lender Charge of \$1,800,000; and
  - (c) the authorization for the Debtors (with the prior approval of the Monitor), or the Monitor (on behalf of the Debtors), to pay amounts owing for goods or services actually supplied to the Debtors either prior to or after the date of this Order, if, in the opinion of the Monitor, the supplier is essential to the business and ongoing operations of the Debtors.
8. On January 10, 2020, the Court granted the Initial Application in its entirety, and rendered, as appears from the Court record:
- (a) an Amended and Restated Initial Order (the "**ARIO**") which provided, *inter alia*:
    - (i) an extension of the Stay Period until May 2, 2020; and
    - (ii) the authorization for the Debtors to borrow from IQ an amount of up to \$6,000,000 under the terms and conditions set forth in the Interim Financing Term Sheet, to be secured by an Interim Lender Charge of \$7,200,000;
    - (iii) an increase in the Monitor's powers, including the powers to conduct and control the financial affairs and operations of the Debtors, and carry on the business of the Debtors; and
    - (iv) the approval of a Key Employee Retention Plan;
  - (b) a Claims Procedure Order which established a "*Claims Bar Date*" of March 16, 2020 (except for restructuring claims).

9. On March 23, 2020, at the request of the Monitor, the Court rendered an order, essentially:
  - (a) clarifying that the Stay applied to the proceedings commenced before the Tribunal Administratif du Québec bearing the court file number STE-Q-211461-1509; and
  - (b) suspending the various penal proceedings against Fortress until May 2, 2020.
10. On May 1, 2020, the Court rendered an order (which was rectified on the same day):
  - (a) extending the Stay Period until August 11, 2020;
  - (b) extending the suspension of the above-mentioned penal proceedings until August 11, 2020; and
  - (c) approving the activities of the Monitor, up until the date of the order rendered, being May 1, 2020, and declaring that the Monitor has fulfilled its obligations pursuant to the CCAA and the orders rendered by this Court.
11. On June 8, 2020, Lauzon – Plancher de Bois Exclusif Inc. (“**Lauzon**”) filed an application (the “**Lauzon Application**”) seeking, *inter alia*, the amendment of the Initial Order, together with various declaratory orders, which was opposed by the Monitor, with the support of IQ. On July 15, 2020, after a contested hearing which lasted 2 days, the Lauzon Application was rejected, in part, by the Court.
12. On August 10, 2020, the Court rendered an order:
  - (a) extending the Stay Period until October 23, 2020;
  - (b) approving an amendment to the Interim Financing Term Sheet (as defined below), and increasing the Interim Lender Charge (as defined below) to \$9,600,000; and
  - (c) approving the activities of the Monitor, up until the date of the order rendered, being August 10, 2020, and declaring that the Monitor has fulfilled its obligations pursuant to the CCAA and the orders rendered by this Court.
13. On October 23, 2020, the Court rendered an order:
  - (a) extending the Stay Period until September 30, 2021;
  - (b) approving a second amendment to the Interim Financing Term Sheet (as defined below), and increasing the Interim Lender Charge (as defined below) to \$20,400,000; and
  - (c) approving the activities of the Monitor, up until the date of the order rendered, being October 23, 2020, and declaring that the Monitor had fulfilled its obligations pursuant to the CCAA and the orders rendered by this Court.

### 3. FORTRESS' INTENTION TO INCREASE THE PRODUCTION RATE AT THE COGENERATION FACILITY

#### A. General

14. As previously indicated to the Court, since the issuance of the ARIO, the Monitor, in accordance with the powers granted to it by the Court, worked with the Debtors, in consultation with IQ, to reduce their operations to a bare minimum in order to minimize their operating costs, until the demand for pulp and related products increased in the global market.
15. In this context, it was decided that:
  - (a) Fortress Specialty Cellulose Inc. ("**Fortress Specialty**")'s specialty cellulose mill located in Thurso, Québec (the "**Pulp Mill**") would be idled indefinitely so as to minimize operating costs while market conditions improved; and
  - (b) Fortress Bioenergy Ltd. ("**Fortress Bioenergy**", together with Fortress Specialty, "**Fortress**")'s cogeneration facility (the "**Cogeneration Facility**") previously acquired from Fortress Specialty would continue to operate, but at a substantially reduced production rate.
16. However, it was recently determined by Fortress, in consultation with the Monitor and with IQ, that Fortress would increase the production rate at the Cogeneration Facility during the fall of 2020, so as to enable the Debtors to generate additional revenues, for their benefit and that of their creditors.

#### B. The HQ Agreements

17. On or about May 5, 2010 and May 12, 2014, respectively, Fortress Specialty, which previously owned the Cogeneration Facility, entered into two agreements with HQ entitled *Contrat d'approvisionnement en électricité* (the "**HQ Agreements**") pursuant to which, *inter alia*, Fortress Specialty agreed to produce and sell to HQ, and HQ agreed to purchase from Fortress Specialty, certain quantities of electricity produced by the Cogeneration Facility, in accordance with the terms and conditions of the HQ Agreements. Copies of the HQ Agreements are communicated herewith as **Exhibit R-1** and **Exhibit R-2**, respectively.
18. Pursuant to sections 29 and following of each of the HQ Agreements, Fortress Specialty and HQ agreed that Fortress Specialty could be held liable for various penalties and damages to the extent that it failed to meet its contractual obligations set out in the HQ Agreements, including its obligation to deliver, on specific dates, the agreed upon quantities of electricity to be sold to HQ.
19. Accordingly, pursuant to section 25 of each of the HQ Agreements, HQ required (and Fortress Specialty agreed) that Fortress Specialty provide to HQ various guarantees to ensure that such contractual obligations be met (the "**Fortress Guarantees**").
20. Pursuant to section 25.3 of each of the HQ Agreements, the parties agreed that the Fortress Guarantees could be provided in the form of:

- (a) an irrevocable and unconditional letter of credit;
  - (b) a guarantee agreement in the form of the draft agreement attached at Annex IV of each of the HQ Agreements; and
  - (c) a certified cheque.
21. Prior to the commencement of these CCAA Proceedings, the Fortress Guarantees were provided in the form of letters of credit, in the following amounts (the “LCs”):

	<u>Letter of Credit</u>	<u>Amount</u>
(a)	SBGM757915	\$658,000
(b)	SBGM757916	\$182,000
		<hr/>
<b>Total:</b>		<b>\$840,000</b>

Copies of each LCs is communicated herewith as **Exhibit R-3** and **Exhibit R-4**, respectively.

22. On or about March 31, 2015, Fortress Specialty sold and transferred to Fortress Bioenergy the Cogeneration Facility, and various Management and Operating Services Agreement subsequently entered into between such parties pursuant to which it was agreed that Fortress Specialty would provide to Fortress Bioenergy various management and operating services in connection with the Cogeneration Facility.

**C. HQ’s Decision to Draw on the LCs and its Requirement for Replacement Guarantees**

23. In the spring of 2020, IQ was advised that HQ, after having sent to Fortress a prior notice advising it of certain alleged defaults and claims under the HQ Agreements, proceeded to draw the full amount of each LCs as the amounts claimed by HQ as a result of such alleged defaults had not been paid.
24. More specifically, HQ had taken the position that Fortress had breached the terms of the HQ Agreements, by selling electricity to Nanotech, despite its exclusivity obligations set out under the HQ Agreements.
25. Due to the above, HQ retroactively charged to Fortress damages in a total amount in excess of \$1.6 million, which were ultimately partially paid to HQ with the LCs.
26. Since then, HQ has advised Fortress that in order for HQ to continue to purchase electricity from Fortress under the terms of the HQ Agreements, Fortress would be required to provide to HQ replacement guarantees in accordance with the terms of the HQ Agreements.

27. On October 10, 2020, HQ sent a letter to Fortress formally requesting such replacement guarantees in light of Fortress' announced intention to increase the production rate at the Cogeneration Facility, commencing in the fall of 2020. A copy of the October 10, 2020 letter sent by HQ to Fortress is communicated herewith as **Exhibit R-5**.
28. However, and as previously stated in the Monitor's reports filed with this Court, it is simply not possible for Fortress to find a financial institution willing to issue letters of credits in its favour for the benefit of HQ, in the present circumstances.
29. Therefore, over the course of the last few weeks, IQ understands that the Monitor has been in discussion with HQ in order to find a consensual solution which would allow Fortress to continue to sell electricity to HQ under the terms of the HQ Agreements. These discussions have been documented in the various reports of the Monitor filed with this court over the course of the last few months.
30. As part of these discussions, it was discussed and agreed between Fortress, the Monitor and HQ, in consultation with IQ, that the Fortress Guarantees would be substituted as follows:
  - (a) subject to the approval by this Court, the Debtors would grant to HQ, with the consent of IQ, a priority charge over their property (i.e. the HQ Charge), in a total amount equivalent to the LCs previously issued in favour of HQ (i.e. \$840,000), to guarantee the obligations of Fortress (going forward, as of the commencement of the Operation Period, as defined below) under the HQ Agreements. This charge would rank subordinate to the Administration Charge previously granted by this Court as part of the ARIO, but in priority to all other CCAA Charge (as defined in the ARIO), including the Interim Lender Charge (as increased by the order rendered by this Court on October 23, 2020), and to all other encumbrances attached to such property;
  - (b) going forward, for each of the months during which the Cogeneration Facility is expected to be in operation, which Fortress and the Monitor anticipate to be approximately four (4) months since November 25, 2020 (the "**Operation Period**"), HQ will withhold a total amount of \$105,000 per month, up to a maximum of \$420,000 (i.e. a maximum equivalent to 50% of the HQ Charge), from the amounts HQ will be owing to Fortress under the HQ Agreements (the "**HQ Holdback**"), as an additional security in favour of HQ, to guarantee the obligations of Fortress (going forward, as of the commencement of the Operation Period) under the HQ Agreements; and
  - (c) at the end of the Operation Period, the totality of the HQ Holdback will then be released and paid back by HQ to Fortress (and the Monitor) in full, provided that no amount becomes owing (going forward, as of the commencement of the Operation Period) by Fortress to HQ under the HQ Agreements - with the understanding, however, that under no circumstances should the HQ Holdback or any portion thereof be applied against any amounts owing or purported to be owing by Fortress to HQ prior to the Operation Period, or as a result of defaults or purported defaults which could have occurred prior to the Operation Period, whether pursuant to the HQ Agreements or otherwise.

31. IQ believes and respectfully submits that the substitution of the Fortress Guarantees (which were previously granted in the form of the LCs) by the HQ Charge and the HQ Holdback is in the best interest of all parties involved since, *inter alia*:
- (a) on the one hand, Fortress will be in a position to continue to sell electricity to HQ under the terms of the HQ Agreements, thereby allowing Fortress to generate additional revenues and reduce the pressure on its cash-flow forecast, to its own benefit and that of its creditors and other stakeholders; and
  - (b) on the other hand, HQ will benefit from a court-ordered charge (and a holdback) securing the payment of any and all amounts which could be owing by Fortress to HQ pursuant to the terms of the HQ Agreements, which charge will rank ahead of all encumbrances attached to the Debtors' property, including all CCAA Charges, except only for the Administration Charge ordered as part of the ARIO.

In this regard, it should be noted that IQ understands from its discussions with the Monitor that the possibility for Fortress to owe any amount to HQ under the terms of the HQ Agreements is remote and perhaps theoretical, considering the fact that all of Fortress' operations are currently being overseen by the Monitor, and under HQ Agreements, HQ will be the one owing Fortress money for the purchase of electricity during the Operation Period, as it has been the case since the commencement of these CCAA proceedings.

32. In any event, given the potential revenues which may be generated from the operations of the Cogeneration Facility and the sale of electricity to HQ under the terms of the HQ Agreements, IQ consents to the HQ Holdback, and HQ Charge which, if approved, will rank ahead of its Interim Lender Charge, and its conventional pre-filing security interest.
33. IQ understands that the Monitor is supportive of the HQ Charge and the HQ Holdback.

**WHEREFORE, MAY THIS COURT:**

**GRANT** this *Application for the Issuance of an Order Establishing a Charge in Favour of Hydro-Québec* (the "**Application**");

**ORDER** that any capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Application

**DECLARES** that, as security for the amounts which Fortress Specialty Cellulose Inc. ("**Fortress Specialty**") or Fortress Bioenergy Ltd. ("**Fortress Bioenergy**", together with Fortress Specialty, "**Fortress**") may owe going forward to Hydro-Québec ("**HQ**") pursuant to the terms of the agreements entitled *Contrat d'approvisionnement en électricité* entered into between Fortress Specialty and HQ on or about May 5, 2010 and May 12, 2014, respectively, as amended, from time to time (collectively, the "**HQ Agreements**"), HQ shall be entitled to the benefit of and is hereby granted a charge and security in the present and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the "**Property**"), of the Debtors to the extent of the aggregate amount of \$840,000 (the "**HQ Charge**");

**ORDERS** that the HQ Charge shall rank in priority to: (a) any and all CCAA Charges granted by this Court pursuant to the Amended and Restated Initial Order rendered on January 10, 2020, as



such order may have been amended from time to time (the “**ARIO**”), except for the Administration Charge, and to (b) any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property charged by such Encumbrances;

**ORDER** that except as otherwise expressly provided for herein or in the ARIO, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, the HQ Charge, unless the prior written consent of HQ and the Monitor or the prior approval of the Court is obtained;

**DECLARE** that the HQ Charge shall attach, as of the date of this Order, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent including, without limitation, the registration of this Order on the Property;

**DECLARE** that the HQ Charge and the rights and remedies of HQ in relation with the HQ Charge shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made in these proceedings; (ii) any application for a receiver order filed pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) in respect of the Debtors or any receiving order made pursuant to any such application or any assignment in bankruptcy made or deemed to be made in respect of the Debtors; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of the HQ Charge shall not create or be deemed to constitute a breach by the Debtors of any Third Party Agreement to which it is a party; and
- (b) HQ shall have no liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the HQ Charge;

**DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a receiving order filed pursuant to the BIA in respect the Debtors and any receiving order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Debtors, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Debtors pursuant to any order rendered by this Court and the granting of the HQ Charge, do not and will not constitute a settlement, a fraudulent preference, a fraudulent conveyance or other challengeable or reviewable transaction or conduct meriting an oppression remedy under any applicable law;

**DECLARE** that the HQ Charge shall be valid and enforceable as against all Property of the Debtors, including, without limitation, any trustee in bankruptcy, receiver and manager or interim receiver of the Debtors, for all purposes.

**ORDER** the provisional execution of this Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**WITHOUT COSTS**, save and except in case of contestation.

**MONTRÉAL, December 14, 2020**

*Stikeman Elliott*

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**Attorneys for the Co-Applicant /**

**Secured Creditor**

**INVESTISSEMENT QUÉBEC**

## SWORN STATEMENT

I, the undersigned, Ludovic Coderre, having my principal place of business at 413, Saint-Jacques Street, Suite 500, in the city of Montreal, Province of Quebec, solemnly declare the following:

1. I am a Director of Investissement Québec;
2. All the facts alleged in the *Application for the Issuance of an Order Establishing a Charge in Favour of Hydro-Québec* are, to the best of my knowledge, true.

### AND I HAVE SIGNED

DocuSigned by:  
**Ludovic Coderre** 2020-12-14  
88AFBD67F6CF4A8...

**LUDOVIC CODERRE**

**Solemnly declared before me at Montreal,  
on the 14th day of December 2020**

Catherine Barriault #228058

Commissioner of Oaths for the Province  
of Quebec

## NOTICE OF PRESENTATION

TO: the Service List

**TAKE NOTICE** that the *Application for the Issuance of an Order Establishing a Charge in Favour of Hydro-Québec* will be presented for adjudication before the Honourable Marie-Anne Paquette of the Superior Court of Quebec, Commercial Division, at a date, time and in the manner to be confirmed by the Court, and announced to those parties on the Service List.

Best regards.

MONTRÉAL, December 14, 2020

*Stikeman Elliott*

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-057679-199

SUPERIOR COURT  
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**Debtors**

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**Monitor**

- and -

**HYDRO-QUÉBEC**

**Impleaded Party**

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<b>LIST OF EXHIBITS</b>	
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<b>EXHIBIT R-1:</b>	Copy of the Hydro-Québec Agreement dated May 5, 2010;
<b>EXHIBIT R-2:</b>	Copy of the Hydro-Québec Agreement dated May 12, 2014;

<b>EXHIBIT R-3:</b>	Copy of the letter of credit dated July 14, 2015
<b>EXHIBIT R-4:</b>	Copy of the letter of credit dated July 14, 2015;
<b>EXHIBIT R-5:</b>	Copy of the letter sent by Hydro-Québec to Fortress Bioenergy dated October 10, 2020.

**MONTRÉAL, December 14, 2020**

*Stikeman Elliott*

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**Attorneys for the Co-Applicant /**

**Secured Creditor**

**INVESTISSEMENT QUÉBEC**

**SUPERIOR COURT  
(Commercial Division)**

**Court No: 500-11-057679-199**

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL**

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- and - **DELOITTE RESTRUCTURING INC.**

**Monitor**

-and-

**HYDRO-QUÉBEC**

**Impleaded Party**

BS0350

**Our file: 107804-1024**

**APPLICATION FOR THE ISSUANCE OF AN ORDER  
ESTABLISHING A CHARGE IN FAVOUR OF HYDRO-QUEBEC,  
SWORN STATEMENT, NOTICE OF PRESENTATION, LIST OF  
EXHIBITS, EXHIBIT R-1 to R-5  
(Section 11 of the Companies' Creditors Arrangement Act),**

**ORIGINAL**

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