

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE
BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COW HARBOUR CONSTRUCTION LTD.

(the "Company")

*I hereby verify this to be a
true copy of the original.
for Clerk of the Court*

BEFORE THE HONOURABLE)
JUSTICE K.D. YAMAUCHI) ON TUESDAY THE 6TH DAY
IN CHAMBERS, LAW COURTS)
EDMONTON, ALBERTA) OF JULY, 2010.

ORDER AMENDING THE INITIAL ORDER

UPON THE APPLICATION of Cow Harbour Construction Ltd. (the "Applicant"); AND UPON
having read the Originating Notice, the Affidavits and other evidence filed herein, including
certain sealed materials, and various Reports of the Trustee and Monitor Deloitte & Touche Inc.
AND UPON noting the consent of Deloitte & Touche Inc. to Act as Monitor; AND UPON
hearing the consent of PricewaterhouseCoopers Inc. ("PwC") to accept the appointment as set
out herein; AND UPON hearing counsel for the Applicant, counsel for Deloitte & Touche Inc.,
counsel for PwC and counsel for various creditors including the Royal Bank of Canada; AND
UPON reviewing the Initial Order of this Court dated April 7, 2010 (the "Initial Order"); IT IS
HEREBY ORDERED AND DECLARED THAT:

*and the Advisor Patrick
Ross
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A. SERVICE

1. The time for service of the notice of application for this order is hereby abridged and service is deemed good and sufficient.

A.1 AMENDMENT OF INITIAL ORDER

- 1.1 The Initial Order is amended and varied as set out herein effective July 6, 2010.

B. APPLICATION

2. The Applicant is a company to which the CCAA applies.
3. The proceedings commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, by the filing of the Notice of Intention to Make a Proposal by the Applicant (the "Notice of Intention"), shall be taken up and continued under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, and as such, this Order shall be effective as of the date the Notice of Intention was filed, namely April 1, 2010.

C. PLAN OF ARRANGEMENT

4. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, among others, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

D. POSSESSION OF PROPERTY AND OPERATIONS

5. The Applicant shall:
 - a. remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "Property");
 - b. subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property; and

- c. be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
6. To the extent permitted by law, the Applicant shall be entitled to pay the following expenses, incurred prior to or after this Order:
 - a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - b. the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.
7. Except as otherwise provided to the contrary herein, the Applicant shall be entitled to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - b. payment for goods or services actually supplied to the Applicant following the date of this Order.
8. The Applicant shall remit, in accordance with legal requirements, or pay:
 - a. any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

- i. employment insurance,
- ii. Canada Pension Plan,
- iii. income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- b. all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - c. any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.
9. Until such time as the Applicant repudiates a real property lease in accordance with paragraph **14(b)** of this Order, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order ("Rent"), but shall not pay any rent in arrears.
10. Except as specifically permitted in this Order, the Applicant is hereby directed, until further order of this Court:

- a. to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;
- b. to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- c. not to grant credit or incur liabilities except in the ordinary course of the Business.

E. CHIEF RESTRUCTURING ADVISOR

11. The Applicant is directed to immediately hire Patrick Ross as the Chief Restructuring Advisor (the “Advisor”).
12. The Advisor shall:
 - a. Meet and communicate with the primary customer of the Applicant, Syncrude Canada Ltd. (“Syncrude”), to negotiate Syncrude’s support of the Restructuring (as hereinafter defined);
 - b. Meet and communicate with the Applicant’s other customers to negotiate their support of the Restructuring;
 - c. Oversee the Applicant’s adherence to cash flow projections and ensure the timely reporting of any variances therefrom to the Monitor and to the DIP Lender (as hereinafter defined);
 - d. Oversee the development of long term projections and a business plan for the Applicant, including an appropriate governance structure for the Applicant, and shall assist the Monitor and the DIP Lender and its advisors with the review of the long term projections, business plan, and the overall viability of the Applicant;
 - e. With the assistance and guidance of the Monitor, formulate a plan of arrangement for the Applicant with a view of submitting the plan of arrangement to the creditors of the Applicant for their consideration. While formulating the plan of arrangement, the Advisor shall:

- i. Assist the Applicant in discussions and negotiations with the DIP Lender, and the Applicant's other creditors, including discussions and negotiations concerning forbearance agreements and support where necessary;
- ii. Have overall responsibility for the Restructuring;
- iii. Have overall responsibility for implementing cost saving initiatives;
- iv. Approve all purchase commitments over \$10,000;
- v. Approve disbursements in excess of \$10,000, except with respect to the all amounts owed to employees of the Applicant for wages and vacation pay and except with respect to amounts set out in paragraph 8 of this Order;
- vi. Amend customer credit policies, limits and terms as considered necessary;
- vii. Approve all hiring and termination of employees of the Applicant;
- viii. Act as the key point of contact with the DIP Lender and its advisors, including reporting to the DIP Lender on the progress of the Restructuring;
- ix. Ensure that the Applicant satisfies all required conditions for the provision of DIP financing by the DIP Lender;
- x. Manage all litigation matters, in conjunction with the Applicant's legal counsel; and
- xi. Have overall responsibility and authority to manage the size of the equipment fleet of the Applicant.

13. Notwithstanding the foregoing obligations, the Advisor shall not be considered a director of the Applicant for any purpose.

~~13.1 Effective July 6, 2010, the duties and the per diem payment to the Advisor and any of his agents or assistants including Ernst & Young Orenda Corporate Finance Inc. are suspended pending further Order of this Court. This suspension is expressly without prejudice to any~~

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~~argument that the Advisor has been terminated and does not make any determination as to any claim or entitlement of the Advisor to any fees or entitlements.~~

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E.1 COURT ORDERED TRANSACTION FACILITATOR

13.2 PwC is hereby appointed as Court Ordered Transaction Facilitator (the "Facilitator"), as an officer of this Court, with the following powers and duties:

- (a) meet and communicate with the prospective purchasers identified by the Advisor in the CCAA proceedings (the "Prospective Purchasers");
- (b) meet and communicate with the affected lenders and creditors to attempt to clarify and negotiate creditor support for the transactions proposed by the Prospective Purchasers;
- (c) provide any assistance to conclude a transaction, subject to Court approval, with the Prospective Purchasers;
- (d) meet and communicate with Syncrude or other customers to negotiate their support for the transactions proposed by the Prospective Purchasers;
- (e) to amend or extend any transaction proposed by the Prospective Purchasers; and
- (f) to report to this Court as to any progress with respect to effecting a transaction involving ^{a prospective} ~~the proposed~~ Purchaser including, to the extent practicable, a Report on or before July 21, 2010.

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13.3 Nothing in this Order results in the Facilitator being an officer, director nor employee of the Applicant.

13.4 The Facilitator is entitled to retain legal counsel and other advisors to assist it in its performance of its duties, which counsel and advisors fees are included in the charges provided to the Facilitator herein.

F. RESTRUCTURING

14. The Applicant shall, subject to the requirements set out in Section 32 of the *CCAA* and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:
- a. terminate the employment of such of its employees or temporarily lay off such of its employees as the Advisor deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
 - b. in accordance with paragraphs **15** and **16**, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
 - c. repudiate such of the Applicant's arrangements or agreements of any nature whatsoever, whether oral or written, as the Advisor deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
 - d. pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

15. The Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least 7 days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least 2 days' notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased

premises in accordance with paragraph **14(b)** of this order, the Applicant shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. If a lease is repudiated by the Applicant in accordance with paragraph **14(b)** of this order, then:
 - a. during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and
 - b. at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

G. NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

17. Until and including July 23, 2010, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant, the Facilitator, the Advisor or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

H. NO EXERCISE OF RIGHTS OR REMEDIES

18. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant, the Facilitator or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- a. empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on;
 - b. exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment; and
 - c. Affect the rights of Syncrude to reasonable and legitimate set-offs, if any arise or exist, pursuant to its contracts with the Applicant, as such items may arise.
19. Subject to paragraphs **42**, **45** and **46** herein, nothing in this Order shall prevent any party from taking an action against the Applicant, where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

I. NO INTERFERENCE WITH RIGHTS

20. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

J. CONTINUATION OF SERVICES

21. During the Stay Period, all persons having:
- a. statutory or regulatory mandates for the supply of goods and/or services; or

- b. oral or written agreements or arrangements with the Applicant, 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 Business or the Applicant

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the date of this Order.

K. NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT

- 22. Notwithstanding anything else contained in this Order, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

L. PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

- 23. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 19 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one

is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

M. DIRECTORS', OFFICERS', AND CHIEF RESTRUCTURING ADVISOR INDEMNIFICATION AND CHARGE

24. The Applicant shall indemnify its directors, officers, the Facilitator and the Advisor against obligations and liabilities that they may incur as a director, officer, Facilitator or Advisor of the Applicant after the date hereof, except to the extent that, with respect to any officer, director, the Facilitator or the Advisor, such obligation or liability was incurred as a result of the director's or officer's or Advisor's gross negligence or willful misconduct.
25. The directors and officers of the Applicant, the Facilitator and the Advisor shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$2,500,000.00, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 58 and 60 herein.
26. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicant's directors and officers and the Advisor shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

N. APPOINTMENT OF MONITOR

27. Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Advisor's and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Advisor, the Applicant and its shareholders, officers, directors, and

Assistants shall advise the Monitor of all material steps taken by the Applicant or the Advisor pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

28. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- a. monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
 - b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, Business, cash flow and such other matters as may be relevant to the proceedings herein and report to the Court without delay if in the opinion of the Monitor there is a material adverse change in the Applicant's projected cash flow or financial circumstances;
 - c. assist the Applicant, to the extent required by the Applicant, in its dissemination to any DIP Lender and its counsel on a timely basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the DIP Lender;
 - d. advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis;
 - e. advise the Applicant in its development of the Plan and any amendments to the Plan;
 - f. advise the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - g. have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;

- h. be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - i. prepare a report to advise the Court on the reasonableness and fairness of any compromise or arrangement that is proposed between the Applicant and its creditors; and
 - j. perform such other duties as are required by this Order or by this Court from time to time.
29. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.
30. The Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant or the Advisor in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant or the Advisor is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Advisor may agree.

O. ADMINISTRATION FEES

31. The Monitor, counsel to the Monitor, the Facilitator, counsel to the Facilitator and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the Facilitator, counsel to the Facilitator and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, the Facilitator, counsel to the Facilitator, and counsel to the Applicant, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. The Advisor shall be paid in accordance with the agreement between the Applicant and the Advisor as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the Advisor on a weekly basis.
32. At the Monitor's request and subject to the availability of funds in the DIP Facility, the DIP Lender shall pay the accounts of the Applicant's counsel, the Monitor, counsel to the Monitor, the Facilitator and counsel to the Facilitator and the Advisor that are subject to the Administration Charge from the DIP Facility, as those terms are hereinafter defined.
33. The Monitor and its legal counsel shall pass their accounts from time to time.

P. ADMINISTRATION CHARGE

34. The Applicant's counsel, the Monitor, counsel to the Monitor, the Facilitator, counsel to the Facilitator and the Advisor, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000.00, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor, counsel to the Monitor, the Facilitator, counsel to the Facilitator and the Advisor, both before and after the making of this order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs **58** and **60** hereof.

Q. CRITICAL SUPPLIERS' CHARGE

35. In this Order, Critical Suppliers (the “Critical Suppliers”) include persons who would, but for the terms of this Order, be entitled to file valid and enforceable builders’ liens according to the laws of the Province of Alberta on any of the lands:
 - a. upon which the Applicant does work; or
 - b. upon which the Applicant furnishes material in respect of improvements.
36. The Critical Suppliers are directed to supply work and material to the Applicant on the terms and conditions that were in effect prior to the filing of the Notice of Intention by the Applicant.
37. In respect of claims of the Critical Suppliers accrued prior to the date of this Order, if the Applicant and the Monitor agree that any such claim is valid and enforceable and correctly quantified, the Applicant shall, as cashflow permits, pay such claim within 2 months of this Order. The Applicant and the Monitor shall, if necessary, apply to this Honourable Court to determine a mechanism for resolution of any claim where there is no such agreement.
38. Where a Critical Supplier is paid by the Applicant pursuant to the terms of this Order, the Critical Supplier who receives the payment, to the extent that such Critical Supplier owes money to other Critical Suppliers (the “Subs”), shall hold that money in trust for the benefit of those Subs.
39. A Critical Supplier who is subject to the obligations of a trust pursuant to this Order is released from any obligations of the trust when that Critical Suppliers pays the money to:
 - a. the Sub for whom that Critical Supplier holds the money in trust; or
 - b. another person for the purposes of having it paid to the Sub for whom the money is held in trust.
40. In respect of work and material provided after the date of this Order, the Applicant is hereby authorized and directed to pay the Critical Suppliers on the terms and conditions that were in effect prior to the filing of the Notice of Intention.

41. The Critical Suppliers shall be entitled to the benefits of and are hereby granted a charge (the "Critical Suppliers' Charge") on the Property of the Applicant to secure all claims that could, but for the terms of this Order, be secured by valid and enforceable builders' liens pursuant to the laws of the Province of Alberta, which charge shall not exceed \$8,000,000.00. The Critical Suppliers' Charge shall have the priority set out in paragraphs **58** and **60** hereof.

R. BUILDERS' LIENS

42. During the Stay Period, all Persons defined herein as Critical Suppliers are stayed from registering claims for builders' liens.
43. During the currency of the Stay Period, and subject to any subsequent contrary Order of this Honourable Court, any statement of lien registered pursuant to the *Builders' Lien Act* of Alberta against any lands owned or any mineral agreements held by Syncrude (and any trustee or co-owners of or with Syncrude) at any Land Titles Office or Department of Energy ("Alberta Energy") Registry, after April 1, 2010, and claiming a lien pursuant to any contract with the Applicant or any subcontractor under or through the Applicant, shall be void and shall be forthwith discharged from the relevant title or mineral agreement record by the relevant registrar upon delivery to such registrar by Syncrude or its solicitors of a filed copy of this Order.
44. No Person shall hold back or re-direct any sum otherwise payable to the Applicant on account of payments due to the Applicant in respect of work and material provided by the Applicant, directly or through any Critical Suppliers, until further Order of this Honourable Court.

S. GARAGEKEEPERS' LIENS

45. Nothing in this Order shall be construed as preventing any creditor claiming a Garagekeeper's Lien pursuant to the provisions of the *Garagekeepers' Lien Act* of Alberta, from filing, in accordance with section 3 of that Act, a financing statement at Personal Property Registry indicating a claim of lien, for preservation purposes, provided

that no further steps are taken to enforce the claim of lien until these proceedings are concluded without leave of this Honourable Court.

46. Pursuant to section 6(3) of the *Garagekeepers' Lien Act*, notwithstanding the provisions of section 6(2) of that Act, and subject to the provisions of this Order and any further Order of this Honourable Court, the time within which seizure may be effected under the *Garagekeepers' Lien Act* is hereby extended for a further period of six months from the date of this Order, and any affected creditor may register financing change statements in regard to the extension granted herein.

T. RBC FINANCING

The Operating Line

47. The Applicant is authorized to continue to utilize the operating and overdraft facilities (individually and collectively the "Standard Operating Facilities") made available to the Applicant (prior to the granting of this Order) by Royal Bank of Canada ("RBC") in accordance with the terms and conditions of those facilities established between the Applicant and RBC from time to time. Without limiting the foregoing, the Applicant is authorized to borrow and repay funds pursuant to the Standard Operating Facilities subject to the terms and conditions of those facilities established between the Applicant and RBC from time to time.

Post CCA Borrowing

48. The Applicant is authorized to borrow up to \$3,350,000 from RBC (and repay such sum to RBC with interest and any applicable charges or fees) on terms negotiated between RBC and the Applicant (the "Excavator Loan") for the purpose of enabling the Applicant to acquire title to a Hitachi EX 1900 Excavator, serial number HCM18K00001067 (the "Excavator").
49. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other documents as may be requested by RBC for the purpose of evidencing or securing the Excavator Loan.

50. RBC shall be entitled to the benefits of and is hereby granted a charge (the "Excavator Charge") on the Excavator and the proceeds thereof to the extent of the amount outstanding pursuant to the Excavator Loan from time to time. The Applicant shall not grant any Encumbrances, as hereinafter defined, to any Person against the Excavator or its proceeds which would rank in priority to or *pari passu* to the Excavator Charge.

DIP Financing

51. The Applicant is hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from RBC (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that principal borrowings under such credit facility shall not exceed at any point in time an aggregate amount of \$15,000,000.00 unless agreed to by RBC and the Applicant and otherwise permitted by further order of this Court. The Applicant will avail itself of funding pursuant to the Standard Operating Facilities, to the extent available in accordance with the terms and conditions of those facilities, prior to drawing upon the DIP Facility.
52. Such DIP Facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of April 7, 2010 (the "Commitment Letter").
53. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
54. The DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the "DIP Lender's Charge") on the Property of the Applicant to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall

not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs **58** and **60** hereof.

55. Notwithstanding any other provision of this Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- b. upon the maturity of the DIP Facility, the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, or upon the demand for repayment of any amounts advanced pursuant to the DIP Facility, the DIP Lender, may without notice exercise any and all of its rights and remedies against the Applicant or the Property, howsoever arising, including, without limitation, any rights or remedies under or pursuant to the Commitment Letter, the Definitive Documents and the DIP Lender's Charge. Without limiting the foregoing, such rights and remedies shall include, without limitation, the right or remedy to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, subject to the priorities as set out in paragraphs **58** and **60** of this Order; and
- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

Unaffected Creditor

56. RBC shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the Bankruptcy and Insolvency Act of Canada (the "BIA"), with respect to any advances made under the Definitive Documents and in relation to the Excavator Loan.
57. Notwithstanding anything else contained in this Order, nothing in this Order limits any rights or remedies otherwise available to RBC and nothing in this Order shall affect the rights or claims of RBC in connection with any indebtedness, liability or obligation of any kind or nature incurred by the Applicant. Without limiting the foregoing, Section 32 of the CCAA does not apply to any agreement between the Applicant and RBC and paragraphs 17, 18, 20, 21 and 23 shall not apply to RBC or any Proceedings commenced or to be commenced by RBC.

U. VALIDITY AND PRIORITY OF CHARGES

58. The priorities of the Excavator Charge, Administration Charge, DIP Lender's Charge, Critical Suppliers' Charge, and Directors' Charge as among them, shall be as follows:

First – the Excavator Charge (up to the amount outstanding under the Excavator Loan but only as against the Excavator or its proceeds)

Second - Administration Charge (to the maximum amount of \$2,000,000.00);

Third – DIP Lender's Charge (to a maximum amount of \$15,000,000.00);

Fourth – Critical Suppliers' Charge (to a maximum amount of \$8,000,000.00); and

Fifth – the Directors' Charge (to the maximum amount of \$2,500,000.00).

59. The filing, registration or perfection of the Excavator Charge, Administration Charge, DIP Lender's Charge, Critical Suppliers' Charge, or Directors' Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

60. Each of the Administration Charge, DIP Lender's Charge, Critical Suppliers' Charge, and the Directors' Charge (all as constituted and defined herein) shall constitute a charge on the Property of the Applicant and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. The Excavator Charge shall rank in priority to all other Encumbrances in favour of any Person but only as against the Excavator or its proceeds.
61. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property of the Applicant that rank in priority to, or *pari passu* with, any of the Administration Charge, DIP Lender's Charge, Critical Suppliers' Charge, or Directors' Charge unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, the Critical Suppliers, and the beneficiaries of the Administration Charge and the Directors' Charge, or further order of this Court.
62. The Administration Charge, the Commitment Letter, the Definitive Documents, the DIP Lender's Charge, the Critical Suppliers' Charge, and the Directors' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by:
 - a. the pendency of these proceedings and the declarations of insolvency made in this Order;
 - b. any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - c. the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - d. the provisions of any federal or provincial statutes; or
 - e. any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any

existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- i. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;
- ii. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the Applicant entering into the Commitment Letter, or execution, delivery or performance of the Definitive Documents; and
- iii. the payments made by the Applicant pursuant to this order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

63. The Applicant is directed to pay the funds received by the Applicant on or about April 30, 2010 from Syncrude (including, without limitation, any holdback payments) as follows:

- a. In payment of all cash disbursements (other than the \$5,000,000 payment to critical suppliers) contemplated to be made April 30, 2010 in the cash flow being Schedule "A" to Exhibit "A" of the Affidavit of Demetri Kourmarelas sworn April 7, 2010, filed in these proceedings (the "Cash Flow");
- b. \$5,000,000 is to be directed to counsel for the Monitor in relation to the proposed \$5,000,000 payment to critical suppliers contemplated to be made April 30, 2010 by the Cash Flow. Counsel for the Monitor shall hold such funds pending further direction of this Honourable Court;
- c. In satisfaction of the \$2,500,000 payment to RBC contemplated to be made April 30, 2010 by the Cash Flow;

- d. In payment of the \$523,000 on account of the Excavator contemplated to be made May 7, 2010 in the Cash Flow;
- e. As against all sums then outstanding pursuant to the DIP Facility; and
- f. The balance, to be paid in accordance with further direction of this Honourable Court.

V. ALLOCATION

64. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the costs of administration of these proceedings, the Administration Charge, the Critical Suppliers' Charge, the DIP Lender's Charge and the Directors' Charge amongst the various assets comprising the Property.

W. SERVICE AND NOTICE

65. The Monitor shall, within 10 business days of the day this Order is made:
- a. make this Order publicly available by posting this Order on its website at **www.deloitte.com/ca/cowharbour** (the "Website"), which shall be established for informational purposes;
 - b. send, by personal service, mail, courier, facsimile or other electronic transmission, a notice to every known creditor who has a claim against the Applicant; and
 - c. prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available by posting this Order on the Website.
66. Any requirement upon the Monitor to publish in a newspaper upon the granting of the Initial Order is dispensed with.
67. The Monitor shall make the following documents publicly available by posting them on the Website within two business days after the day on which they are filed:

- a. reports of the Monitor, including exhibits, and cash-flow statements that are filed with the court, other than those – or any part of them – that are subject to a court order prohibiting their release to the public; and
 - b. proposed compromises or arrangements that are filed with the court, including amendments to them.
68. The Monitor shall make publicly available court orders in these proceedings, other than this Order, by posting them on the Website within two business days after the day on which they are filed.
69. The Monitor shall make written communications and notifications that the Monitor sends to all creditors publicly available by posting them on the Website within two business days after the day on which they are sent.
70. The Monitor shall provide the Applicant's creditors with information as to how they may access the documents listed in paragraphs 67 to 69 of this Order.

X. GENERAL

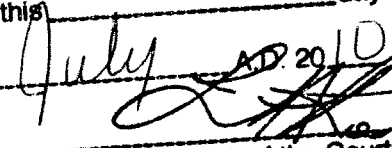

71. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
72. Nothing in this Order shall prevent the Monitor or the Facilitator from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.
73. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

- 74. Each of the Applicant, the Facilitator and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
- 75. This Order and all of its provisions are effective as of the date the Notice of Intention was filed, namely April 1, 2010.

Y. VARIATION OR AMENDMENT OF THIS ORDER

- 76. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than 7 days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order. At such application, any such interested party shall be at liberty to seek the amendment of this Order.

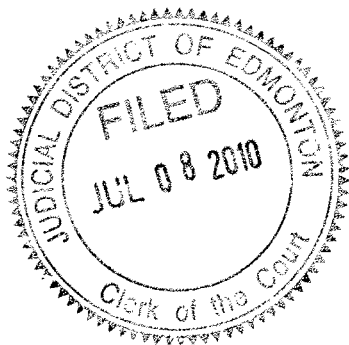
" K. D. YAMAUCHI "
J.C.Q.B.A.

Entered this 8 day
of July A.D. 2010

Clerk of the Court 

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE
BANKRUPTCY AND INSOLVENCY ACT,
R.S.C.1985, c. B-3, AS AMENDED
AND THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF
COW HARBOUR CONSTRUCTION LTD.



INITIAL ORDER

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