



No. **SΞ248100**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C
1985, C-36, AS AMENDED

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

SPERLING GP LTD.
SPERLING LIMITED PARTNERSHIP
1112849 B.C. LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO: The Respondents, **SPERLING LIMITED PARTNERSHIP,**
SPERLING GP LTD., and 1112849 B.C. LTD.
Suite 1701 – 1166 Alberni Street
Vancouver, British Columbia V6E 3Z3

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

The petitioner estimates that the hearing of the Petition will take 60 minutes.

☐ This matter is an application for judicial review.

☒ This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by

- ☐ the person(s) named as petitioner(s) in the style of proceedings above
☒ (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner is: 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8 Fax number address for service (if any) of the petitioner: 604-683-5214 E-mail address for service (if any) of the petitioner[s]: jordan.schultz@dentons.com Cassandra.federico@dentons.com avic.arenas@dentons.com
(2)	The name and office address of the petitioner's lawyer is: Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. An order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**") substantially in the form attached as **Schedule "A"** hereto, which, among other things:
 - a. abridges the time for service of this Petition and supporting materials so that the application is returnable on November 25, 2024;
 - b. appoints Deloitte Restructuring Inc. as monitor of the Respondents (in such capacity, the "**Monitor**"), with certain enhanced powers to exercise control over the business and property of the Respondents in accordance with the terms of the Initial Order;
 - c. grants a stay of proceedings in respect of the Respondents;
 - d. grants certain charges over the Respondents' property securing (i) amounts owing to the professionals required to advance these proceedings; (ii) amounts owing to the Petitioner and Lenders under the Credit Agreement;
 - e. approves the interim financing (the "**Interim Financing**") to be provided to the Respondents by Peterson Investment Group Inc. (the "**Interim Lender**"), on the terms and conditions to be set out in the commitment letter between the Debtors and the Interim Lender (the "**Commitment Letter**"), to be finalized and executed by the Monitor for and on behalf of the Debtors in accordance with the terms of the Initial Order; and
 - f. approves a sales and investor solicitation process in respect of the Respondents' property, assets and undertakings (the "**SISP**").
2. Such further relief as counsel may advise and this Honourable Court may permit.

Part 2: FACTUAL BASIS

The Parties

3. The Petitioner, Royal Bank of Canada ("**RBC**" or the "**Petitioner**") is a financial institution having an address for service in this proceeding care of its solicitors,

Dentons Canada LLP, 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8.

4. The Respondent, Sperling Limited Partnership ("**Sperling LP**" or the "**Partnership**") is a British Columbia limited partnership having a registered office at 19th Floor-885 West Georgia Street, Vancouver, British Columbia, V6C 3H4.
5. The Respondent, Sperling GP Ltd. ("**Sperling GP**") is the general partner of Sperling LP and a British Columbia corporation having a registered office at 19th Floor-885 West Georgia Street, Vancouver, British Columbia, V6C 3H4.
6. The Respondent, 1112849 B.C. Ltd. (the "**Nominee**", and together with Sperling LP and Sperling GP, the "**Debtors**") is a British Columbia corporation having a registered office at 19th Floor-885 West Georgia Street, Vancouver, British Columbia, V6C 3H4.

Background

7. The Debtors are special purpose entities that were formed to acquire, own and develop a mixed-use development (the "**Project**") on the real property with a civic address of 6800 Lougheed Highway, Burnaby, British Columbia, legally described as:

PID: 007-772-751

Lot 1, Except: Firstly; Part In LMP44883, Secondly; Part In Plan BCP314, Thirdly; Part in Plan BCP1828, Fourthly; Part In Plan BCP22451 District Lot 78 Group 1 New Westminster District Plan 74615

(the "**Real Property**").

8. The Real Property is a 19-acre industrial property adjacent to Sperling-Burnaby Lake SkyTrain station, which was previously occupied by a dairy plant.
9. The Debtors are wholly controlled by two property development companies with real estate portfolios throughout the Greater Vancouver Area, namely Create Urban Development Corp. and Create Burnaby Investment Ltd. (together, "**Create**") and Peterson Development One GP Inc. and Peterson Investment Holdings Inc. ("**Peterson**", and together with Create, the "**Partners**").
10. The day-to-day operation of the Partnership and lead of the Project is managed by Peterson. However, given the current ownership structure and agreements

governing the Partnership, there are certain matters which require the consent of both Partners.

11. RBC is the administrative agent, syndication agent and lead arranger, pursuant to the Credit Agreement (defined below) of a lending syndicate consisting of RBC, the Toronto Dominion Bank, the Bank of Montreal, and the Bank of Nova Scotia (collectively, the "**Lenders**").
12. The respective rights, interests, and obligations of the Petitioner and Lenders under the Credit Agreement and associated security documents are governed by the terms and conditions set out in an amended and restated interlender agreement dated February 14, 2024 among the Lenders, as lenders, and RBC, as agent (the "**Interlender Agreement**").

Loans and Security

13. Pursuant to an amended and restated credit agreement dated February 14, 2024 among RBC, as administrative agent, syndication agent and lead arranger, the financial institutions that may from time to time be party thereto, as lenders, Sperling LP by its general partner Sperling GP, as borrower, the Nominee, as nominee, and Peterson Property Holdings Inc. ("**PPHI**"), Spruceland Mall Limited Partnership ("**SMLP**") Peterson Investment (Spruceland) Ltd. ("**PISL**", and together with PPHI and SMLP, the "**Guarantors**") (the "**Credit Agreement**"), as guarantors, the Lenders made available to the Debtors certain loan facilities with a total value of CAD\$210,000,000, including a land loan in the amount of CAD\$160,000,000 and a pre-development loan in the amount of CAD\$50,000,000 (collectively, the "**Loan Facilities**").
14. The Credit Agreement also establishes a standalone interest rate swap facility in the notional amount of USD\$2,000,000 to allow for an interest rate swap-contract or contracts to assist Sperling LP in hedging against fluctuations in the costs of borrowing (the "**Swap Facility**").
15. As security for the debts, liabilities and obligations under the Credit Agreement, the Debtors granted certain security to RBC, as agent on behalf of the Lenders, including, without limitation:
 - a. a mortgage and assignment of rents dated February 24, 2022 (the "**Mortgage**") in the principal amount of CAD\$210,000,000 charging the Real Property granted by the Nominee in favour of RBC and bearing a

notation as to registration at the New Westminster Land Title Office ("LTO") on February 25, 2022 under registration nos. CA9744633 and CA9744634;

- b. a project specific general security agreement dated February 24, 2022 granted by the Debtors in favour of RBC (the "**GSA**");
- c. a beneficial mortgage and authorization dated February 24, 2022 granted by the Debtors in favour of RBC (the "**Beneficial Mortgage**");
- d. an environmental indemnity agreement dated February 24, 2022 granted by the Borrower, Nominee, and Guarantors in favour of RBC;
- e. a mortgage and assignment of rents in respect of the Swap Facility dated February 24, 2022 in the principal amount of USD\$2,000,000 charging the Real Property granted by the Nominee in favour of RBC and bearing a notation as to registration at the LTO on February 25, 2022 under registration nos. CA9744635 and CA9744636; and
- f. a beneficial mortgage and authorization (swap facility) dated February 24, 2022 granted by the Borrower and the Nominee in favour of RBC.

(collectively, and as amended from time to time, the "**Security**")

16. Pursuant to the terms and conditions of the Credit Agreement, the Guarantors granted to the Lenders the following guarantees:

- a. a guarantee dated February 24, 2022 granted by the Guarantors in favour of RBC, limited to the amount of CAD\$210,000,000;
- b. a debt service agreement dated February 24, 2022 granted by the Guarantors in favour of RBC; and
- c. a guarantee for the Swap Facility dated February 24, 2022 granted by the Guarantors in favour of RBC, limited to the amount of USD\$2,000,000

(collectively, the "**Guarantees**").

Defaults and Current Indebtedness

17. Pursuant to the Credit Agreement, the maturity date for the Loan Facilities was September 1, 2024 (the "**Maturity Date**").

18. An event of default occurred when, *inter alia*, the Debtors failed to repay the Loan Facilities on or before the Maturity Date (the “**Event of Default**”).
19. As of November 21, 2024, the Debtors are indebted to the Lenders in the total amount of \$207,601,972.89 pursuant to the Credit Agreement, together with costs and interest which continue to accrue (together, the “**Indebtedness**”).

Partnership Disputes

20. To the best of RBC's knowledge, over the past 12 months, certain disputes between the Partners have arisen relating to the progression of the Project and management of Sperling LP, resulting in various mediation and arbitration proceedings (the “**Arbitration Proceedings**”). The result of these disputes is that the Project is currently at a standstill, and in the interim Sperling LP is unable to fulfill its obligations to the Lenders.
21. Following the Event of Default and with the consent of the Lenders, RBC issued demand letters and notices of intention to enforce security to the Debtors and the Guarantors (the “**Demand Letters**”) dated September 3, 2024, demanding repayment of the indebtedness under the Loan Facilities and the Guarantees.
22. Following issuance of the Demand Letters, the Lenders were advised that meetings of the directors and shareholders of Sperling GP were being convened in order to approve the issuance of 208,346,300 additional units of Sperling LP, at a unit price of \$1.00 per unit (the “**Equity Raise**”), in order to raise the capital necessary to repay the Indebtedness. As a result of the foregoing, the Lenders agreed to reserve their rights under the Credit Agreement, Security, and other documents, pending completion of the Equity Raise.
23. On or about October 18, 2024, Create filed a petition in the Supreme Court of British Columbia, Action No. S-267177, seeking an interim injunction enjoining Sperling GP from taking any steps with respect to issuing additional partnership units in the capital of Sperling LP, pending an order from the arbitration tribunal in the Arbitration Proceedings.
24. In light of Create's petition, the Partners are not pursuing the Equity Raise, and as a result the only recourse left to the Lenders to recover the Indebtedness is to seek to enforce the Security.

Appropriateness of CCAA Proceedings

25. Notwithstanding the foregoing, the Project appears to be viable but for the dispute between the Partners.
26. In light of the foregoing dispute, the Lenders are not willing to extend the Maturity Date under the Credit Agreement, and accordingly the Indebtedness needs to be repaid.
27. While a sale of the Real Property may ultimately be the best outcome in these circumstances, it is not necessarily the only possible outcome. The proposed proceedings under the CCAA will provide the flexibility to pursue other potential transactions, such as an investment or potential refinancing, which may better preserve value for stakeholders over an immediate sale.
28. Accordingly, the Lenders are proposing a “dual track” SISP to permit the assessment of a variety of bids and potential transactions.
29. In the interim, in light of the dispute between the Partners, it is necessary to give the proposed Monitor expanded powers to ensure it can pursue and complete whichever transaction is ultimately reached through the SISP.

The Initial Order

Appointment of Monitor with Enhanced Powers

30. The appointment of the Monitor with enhanced powers is appropriate in these circumstances because the disputes among the Partners controlling the Debtors will inhibit the Debtors' ability to facilitate a restructuring process on their own. The Monitor will be able to facilitate the CCAA proceedings and SISP efficiently.
31. Deloitte has consented to act as Monitor, and if the Initial Order is granted, Deloitte has also agreed to manage the Debtors' affairs during these proceedings, and run the SISP.
32. Deloitte is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”) and is not subject to any restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

Stay of Proceedings

33. The Petitioners require a broad stay of proceedings to allow the Monitor run the SISP and develop a restructuring plan with the view of maximizing benefits to the Lenders and all other stakeholders.
34. To the best of the Lenders' knowledge, the Debtors have no other secured creditors.

Charges

35. RBC seeks an administration charge of \$200,000 (the "**Administration Charge**") to secure the amounts that may be owing to RBC's counsel, the Monitor, and the Monitor's counsel.
36. RBC believes that this charge is necessary to facilitate these proceedings.

SISP

37. The SISP is a critical component of these proceedings, and as such, RBC seeks the approval of the SISP as part of the Initial Order.
38. The SISP is designed to be flexible in terms of the type of transaction that may be sought by the Monitor and permit refinancings, equity transactions, and other types of transactions, in addition to asset sales on an "as is where is" basis.

Interim Financing

39. Funding will be required to facilitate the SISP through the CCAA proceedings, including for maintenance and marketing of the Real Property.
40. Accordingly, the Interim Lender has agreed to advance the Interim Financing, and the Lenders and the Monitor are in discussions with the Interim Lender to finalize the Commitment Letter for such financing.

Urgency

41. The Debtors cannot meet their obligations to the Lenders and there is no reasonable prospect of the Debtors repaying the Indebtedness due to the ongoing disputes among the Partners controlling the Debtors.

42. RBC requires the relief sought in the Initial Order on an urgent basis in order to allow the Monitor to commence the SISP. The CCAA will allow the most flexible process for RBC, and the Monitor, with its enhanced powers, will be able to run the SISP efficiently to seek the best recovery of the Indebtedness for the Lenders.

Part 3: LEGAL BASIS

Respondents are Debtor Companies to which the CCAA Applies:

43. The CCAA applies in respect of a debtor company or affiliated debtor companies if the total claims against the debtor company or affiliated debtor companies is more than \$5,000,000.

CCAA, Section 3(1)

44. The CCAA defines “company” and “debtor company” as follows:

“company” means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

“debtor company” means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not

proceedings in respect of the company have been taken under either of those Acts,

- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

CCAA, Section 2(1)

45. Whether a company is insolvent is evaluated with reference to the definition of an insolvent person in the BIA, which provides that:

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- a. who is for any reason unable to meet his obligations as they generally become due,
- b. who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- c. the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*).

BIA, Section 2.

46. Although the definition of "debtor company" in the CCAA does not capture partnership, courts have held that where a limited partnership is significantly interrelated to the business of a debtor company and forms an integral part of its operations, the Court may extend the stay of proceedings accordingly.

Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc.
(Re) 2019 ONSC 1215 at para 26

47. The Respondents are functionally integrated with one another, with Sperling GP being Sperling LP's general partner, and the Nominee holding legal title over the Real Property, which Sperling LP is the beneficial owner of.
48. The Petitioner submits that the Respondents qualify as debtors under the CCAA because:
- a. the Respondents have failed to repay their obligations following the issuance of the Demand Letters;
 - b. the Indebtedness is more than \$5,000,000;
 - c. the Respondents are corporations registered in British Columbia or partnerships registered in British Columbia and therefore are debtor companies under the CCAA.

Standing of the Petitioner under the CCAA

49. The CCAA expressly grants standing to creditors to commence proceedings in respect of a debtor company.

***Miniso International Hong Kong Limited v. Migu Investments Inc., 2019
BCSC 1234 ("Miniso") at para 45***

50. Per Fitzpatrick J. in *Miniso*, "The commencement of CCAA proceedings is a proper exercise of creditors' rights where, ideally, the CCAA will preserve the going-concern value of the business and allow it to continue for the benefit of the "whole economic community", including the many stakeholders here. This is intended to allow stakeholders to avoid losses that would be suffered in an enforcement and liquidation scenario".

Miniso, at para 47

51. The Petitioner, as a creditor, has standing to bring an initial application under the CCAA in respect of the Respondents, and is doing so with the objective of avoiding losses that could be suffered in an enforcement and liquidation scenario.

Purpose of Application of CCAA

52. The CCAA is remedial legislation which gives Canadian Courts flexible mechanisms with greater judicial discretion, relative to the BIA, to achieve the

CCAA's legislative purpose, which is to avoid the social and economic losses resulting from liquidations of insolvent companies.

***Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
[*Century Services*], at paras 14, 70**

53. The CCAA's distinguishing feature is: "a grant of broad and flexible authority to the supervising court to make ... the orders necessary to facilitate the reorganization of the debtor and achieve the CCAA's objectives."

***Century Services*, at para 19**

54. While the CCAA has historically been used for the purpose of debtor companies operating as a going-concern to facilitate restructuring that would result in the continued operations, in pursuit of the legislation's remedial objectives, CCAA proceedings have evolved to permit outcomes that do not result in the pre-filing debtor company continuing operations in a restructured state. Rather, CCAA proceedings may result in some form of liquidation of the debtor company, which may involve, among other things: sale of the debtor company as a going concern; an "en-bloc" sale of assets for use by the buyer; a partial liquidation or downsizing, or a piecemeal sale of assets.

***9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras 40-44**

55. The Petitioner respectfully submits that CCAA proceedings are the appropriate mechanism through which the Lenders may recover the Indebtedness in the circumstances, due to the flexible nature of the CCAA and the complexity and value of the Petitioners' collateral.

Appointment of a Monitor with Enhanced Powers

56. Pursuant to section 11.7 of the CCAA, the Court shall appoint a person to monitor the business and financial affairs of a debtor company at the same time that an initial CCAA order is made.

CCAA section 11.7.

57. Section 23 of the CCAA sets out the duties and functions of a monitor appointed in CCAA proceedings, including that the monitor may "carry out any other functions in relation to the company that the court may direct."

CCAA, Section 23(k)

58. While the CCAA has traditionally been a debtor-driven process where the monitor acts a supervisory agent, courts have allowed secured creditors to take a more active role in CCAA restructuring processes, by expanding the role of the monitor in the proceedings. Factors that courts have considered when approving orders which expand the monitor's powers in a CCAA Proceeding to remove debtors' management from the helm of the restructuring process include:
- a. resignation of management, leaving no directors or officers in place;
 - b. management is unfit to conduct a restructuring process that would be in the best interests of all stakeholders;
 - c. any potential restructuring path available would be doomed to fail; and
 - d. management is conflicted, notably because it is participating in the SISP under a CCAA.

Julie Himo and Arad Mojtahedi, The Evolving Role of the Eyes and Ears of the Court: Empowering the CCAA Monitor to Initiate Legal Proceedings Against Third Parties, 2020 18 Annual Review of Insolvency Law 120, 2020 CanLII Docs 3599

Citing: Luc Morin & Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs" in Jill Corraini & the Honourable D Blair Nixon, eds, Annual Review of Insolvency Law 2019 (Toronto: Thomson Reuters, 2020)]

59. Given the on-going disputes among the Partners, the Debtors are unable to facilitate their own restructuring process. Thus, the appointment of the Monitor with expanded powers is necessary in the circumstances to carry out the SISP in an efficient manner and ensure completion of a transaction at the end of that process.

Stay of Proceedings

60. Section 11.02 of the CCAA grants the Court with jurisdiction to order a stay of proceedings to temporarily prevent creditors from initiating or advancing claims against the debtor company for no more than ten (10) days.

CCAA, Section 11.02

61. RBC submits that the stay is necessary and appropriate to preserve the Debtors' property for the benefit of the Lenders. Any proceedings commenced against the

Debtors may negatively impact the SISP and restructuring efforts to be carried out by the Monitor.

Interim Financing

62. Section 11.2 of the CCAA grants the Court with the jurisdiction to approve the Interim Financing and an interim financing charge in favour of the Interim Lender.
63. In deciding whether to approve an order for interim financing, the CCAA requires that the Court considers, among others, the following factors:
- a. the period during which the company is expected to be subject to proceedings under the CCAA;
 - b. how the company's business and financial affairs are to be managed during the proceedings;
 - c. whether the company's management has the confidence of its major creditors;
 - d. whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - e. the nature and value of the company's property;
 - f. whether any creditor would be materially prejudiced as a result of the security or charge; and
 - g. the monitor's report referred to in paragraph 23(1)(b), if any.

CCAA, section 11

64. The Petitioner submits that these factors are supported in this proceeding. The Interim Financing will assist the Debtors and the Monitor through the SISP, preserve the value of the Real Property, and fund the marketing of the Real Property. The Lenders also support the Interim Financing and are satisfied it is necessary in the circumstances.

Administration Charge

65. Section 11.52 of the CCAA provides the Court with express statutory jurisdiction to grant the Administration Charge, provided notice is given to secured creditors

who are likely to be affected by it. The Administration Charge satisfies the well-accepted factors originally established by Pepall J. (as she then was) in *Canwest Publishing*. The requested amount is fair and reasonable having regard to the size and complexity of the Debtors and their business. The Debtors' senior secured creditor, the Petitioner and Lenders, support the Administration Charge. And the Petitioner will provide notice of the initial order (if granted) and the materials filed by the Petitioner in support of a comeback hearing to all other secured creditors who may be impacted by the Administration Charge.

CCAA, section 11.2

***Canwest Publishing Inc.*, 2010 ONSC 222 at para 54**

Approval of the SISP

66. Approvals of SISPs are common features of CCAA proceedings. In reviewing a proposed SISP, courts should consider, among others, the following factors:
- a. the fairness, transparency and integrity of the proposed process;
 - b. the commercial efficacy of the proposed process in light of the specific circumstances; and
 - c. whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

***Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107, at para 20**

67. Courts have also considered the following factors when approving sales processes in CCAA Proceedings:
- a. whether a sale is warranted at the time;
 - b. whether the sale will benefit the "whole economic community";
 - c. whether any creditors have a *bona fide* reason to object to the sale of a business; and
 - d. whether there is a viable alternative.

Nortel Networks Corp. (Re) (2009), 55 C.B.R. (5th) 229 at para 49

68. Section 36(3) of the CCAA sets out six non-exhaustive factors that the Court is to consider when approving the sale of a debtor company's assets outside the normal course of business. Although the Petitioner is not currently seeking the sale of a specific transaction, the Petitioner submits that the following factors are relevant considerations in the Court's approval of the proposed SISP:

Factors to be considered

In deciding whether to grant the authorization, the court is to consider, among other things,

- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. whether the monitor approved the process leading to the proposed sale or disposition;
- c. whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d. the extent to which the creditors were consulted;
- e. the effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

CCAA, s. 36(3)

69. The Petitioner has worked with the Monitor and its counsel to develop the terms of the SISP and the Monitor will oversee the SISP and will report to the Court with respect to the outcome of the SISP.

70. A summary of the key dates in the SISP are:

Event	Timing
Commencement of Phase I	January 6, 2025
LOI Deadline for receiving letters of intent	March 21, 2025

Event	Timing
Commencement of Phase II	March 28, 2025
Final Bid Deadline	April 11, 2025
Definitive Agreement Deadline	April 17, 2025
Outside Closing Date	May 30, 2025

71. The Petitioner respectfully submits that the SISP is reasonable in the circumstances.

Part 4: MATERIALS TO BE RELIED ON

72. Affidavit #1 of Cameron Bailey, sworn 22/NOV/2024;

73. Affidavit #2 of Cameron Bailey, sworn 22/NOV/2024; and

74. Affidavit #1 of Chelsea Denton, sworn on 22/Nov/2024

Date: 22/November/2024

Signature of Jordan Schultz
Lawyer for petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of
Part 1 of this Petition

with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Associate Judge

Form 11 (Rule 4-5 (2))

SCHEDULE "A"

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C.
C-36, AS AMENDED

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

SPERLING GP LTD.
SPERLING LIMITED PARTNERSHIP
1112849 B.C. LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

INITIAL ORDER

	)	THE HONOURABLE	)
BEFORE	)		) 25/NOV/2024
	)	JUSTICE MASUHARA	)

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 25 day of November, 2024 (the "**Order Date**"); AND ON HEARING Jordan Schultz, counsel for the Petitioner and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Cameron Bailey sworn November 22, 2024 (the "**Bailey Affidavit**") and the consent of Deloitte Restructuring Inc. to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the "**Application**") is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.

JURISDICTION

2. The Respondents (otherwise referred to herein as the "**Debtors**") are companies to which the CCAA applies.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10 a.m. on Thursday, the 5 day of December, 2024 or such other date as this Court may order.

PLAN OF ARRANGEMENT

4. The Debtors 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**"), under the direction of the Monitor in accordance with paragraph 25 of this Order.

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further Order of this Court, the Debtors shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Debtors shall 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 them, with liberty to retain such further Assistants under the direction of the Monitor, as are deemed reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.
6. The Debtors shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:
 - (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

- (b) the fees and disbursements of any Assistants retained or employed by the Debtors which are related to the Debtors' restructuring, at their standard rates and charges.
7. Except as otherwise provided herein, the Debtors shall be entitled to pay all expenses reasonably incurred by the Debtors in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably incurred and which are 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, provided that any capital expenditure exceeding \$5,000 shall be approved by the Monitor and the Petitioner;
 - (b) all obligations incurred by the Debtors after the Order Date, including without limitation, with respect to goods and services actually supplied to the Debtors following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Debtors' obligations incurred prior to the Order Date); and
 - (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.
8. The Debtors are authorized to 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 Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; 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 property taxes, municipal business taxes 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.
9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Debtors shall 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 between the Debtors and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Debtors are 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 Debtors to any of their creditors as of the Order Date except as authorized by this Order (including, without limitation, as authorized pursuant to paragraph 11 of this Order);
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Debtors to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

FINANCIAL ARRANGEMENTS

11. Notwithstanding any other provision in this Order, those financial institutions (collectively, the "**Lenders**") from time to time party to the amended and restated credit agreement dated February 14, 2024 (the "**Credit Agreement**") between, among others, Sperling LP, as borrower, the Petitioner, as the administrative agent, syndication agent and lead arranger, and the Lenders, as lenders, shall be entitled to collect interest, fees and costs pursuant to the Credit Agreement, and the Debtors shall pay the same, subject to such amendments as are agreed between the Petitioner and the Debtors.

RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Debtors, under the direction of the Monitor, shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets;
- (b) terminate the employment of such of its employees or temporarily lay off such of their employees as the Debtors deems appropriate; and
- (c) pursue all avenues of refinancing for the Business or Property, in whole or part;

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

13. The Debtors shall provide each of the relevant landlords with notice of the Debtors intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Debtors 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 who claim a security interest in the fixtures, such landlord and the Debtors, or by further Order of this Court upon application by the Debtors, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Debtors disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Debtors' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Debtors and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Debtors, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Debtors of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Debtors, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Debtors binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Debtors or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Debtors.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including December 5, 2024, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Debtors and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
17. During the Stay Period, all rights and remedies of any individual, firm, corporation, partnership, trust, joint venture, association, organization, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Debtors and the Monitor or leave of this Court.
18. Nothing in this Order, including paragraphs 16 and 17, shall: (i) empower the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect

a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtors.

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Debtors or mandates under an enactment 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 Business or the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, 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 Order Date are paid by the Debtors 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 Debtors and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Debtors on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors 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 Debtors, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtors or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Debtors that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

APPOINTMENT OF MONITOR

23. Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Debtors with the powers and obligations set out in the CCAA or set forth herein, and that the Debtors and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Debtors pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
 - (a) monitor and control the Debtors' receipts and disbursements and implement such measures and controls as the Monitor deems reasonably necessary to ensure the appropriate monitoring and controls of the Debtors' expenses and disbursements;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - (c) assist the Debtors in their dissemination, to the Interim Lender (as hereinafter defined) and its counsel on a weekly basis of financial and other information as agreed to between the Debtors and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
 - (d) prepare the Debtors' cash flow statements and reporting required by the Interim Lender, which information shall be delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
 - (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under this Order;
 - (f) 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; and

- (g) perform such other duties as are required by this Order or by this Court from time to time.

25. In addition to the foregoing powers, the Monitor is hereby empowered and authorized, but not obliged, to act at once in respect of the Property and the Business and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor, in its sole discretion, considers it necessary or desirable:

- (a) manage, operate and take all actions in the name of and on behalf of the Debtors to carry on the Business, including the powers to enter into any agreements, incur any obligations in the ordinary course, cease to carry on all or any part of the Business, or cease to perform any contracts of the Debtors;
- (b) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property and the Business, whether in the Monitor's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (c) execute the Definitive Documents (as hereinafter defined) in the name and on behalf of the Debtors;
- (d) engage, retain, or terminate or cause the Debtors to engage, retain or terminate, the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of its powers and duties or those of the Debtors;
- (e) disclaim, in accordance with the CCAA, any contracts of the Debtors;
- (f) take any and all steps in order to direct or cause the Debtors to exercise their rights pursuant to this Order or any other Order granted in these CCAA proceedings;
- (g) cause the Debtors to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Debtors in dealing with the Property and the Business;
- (h) apply for permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Monitor, in the name of the applicable Debtors;
- (i) meet with and direct management of the Debtors with respect to any of the foregoing including, without limitation, operational and restructuring matters;
- (j) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (k) take steps for the preservation and protection of the Business and the Property;
- (l) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets belonging or owing to the Debtors;
- (m) engage, deal, communicate, negotiation, agree and settle with any creditor or other stakeholder of the Debtors in the name of and on behalf of the Debtors;

- (n) initiate, prosecute, defend, settle and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Business. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (o) receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (p) cause the Debtors to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Debtors in dealing with the Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (q) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter; and
- (r) take any steps reasonably incidental to the exercise by the Monitor of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors and their past or present directors and officers, and without interference from any other Person.

26. The Monitor shall be authorized and empowered, but not required, to operate and control, on behalf of the Debtors, all of the Debtors' existing accounts at any financial institution (each an "**Account**", and collectively, the "**Accounts**") in such manner as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation, to:
- (a) exercise control over the funds credited to or deposited in the Accounts;
 - (b) effect any disbursement from the Accounts permitted by this Order or any other order granted in these proceedings;
 - (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
 - (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account.
27. Except as expressly set out in this Order, the Monitor shall not take possession of the Property 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 maintained possession or control of the Property, or any part thereof.

28. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Debtors, under the direction of the Monitor, may terminate the employment of such employees. The Monitor 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 *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), other than amounts the Monitor may specifically agree in writing to pay. The Monitor shall not 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 Monitor may hire in accordance with the terms and conditions of such employment by the Monitor.
29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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 Monitor is actually in possession.
30. The Debtors and their directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall cooperate with the Monitor in discharging its duty.
31. The Monitor shall provide any creditor of the Debtors and the Interim Lender with information provided by the Debtors 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 Debtors 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 Debtors may agree.
32. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

33. The Monitor, counsel to the Monitor, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the cost of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis.
34. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.
35. The Monitor, counsel to the Monitor, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Debtors' restructuring. The Administration Charge shall have the priority set out in paragraphs 42 and 44 hereof.

INTERIM FINANCING

36. The Debtors are hereby authorized and empowered to obtain and borrow under a credit facility from Peterson Investment Group Inc. (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$200,000 unless permitted by further Order of this Court.
37. Such credit facility shall be on the terms and subject to the conditions set forth in the proposed commitment letter between the Debtors and the Interim Lender, attached as Exhibit "B" to the Bailey Affidavit (the "**Commitment Letter**"), to be finalized and executed by the Monitor for and on behalf of the Debtors in accordance with the terms of this Order.
38. The Monitor, on behalf of the Debtors, 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 Interim Lender pursuant to the terms thereof, and the Monitor, on behalf of the Debtors, is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim 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.

39. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 42 and 44 hereof.
40. Notwithstanding any other provision of this Order:
- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, with the consent of the Petitioner and upon 4 days' notice to the Monitor, may exercise any and all of its rights and remedies against the Debtors or the Property under or pursuant to the Commitment Letter, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Debtors and set off and/or consolidate any amounts owing by the Interim Lender to the Debtors against the obligations of the Debtors to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim 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 Debtors and for the appointment of a trustee in bankruptcy of the Debtors; and
 - (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtors or the Property.
41. Each of the Lenders and the Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by or in respect of the Debtors under the CCAA, or any proposal filed by or in respect of the Debtors under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

42. The priorities of the Administration Charge, the Lender Charge (as defined below), and the Interim Lender's Charge, as among them, shall be as follows:
- First – Administration Charge (to the maximum amount of \$200,000);
 - Second – the security interests, mortgages, charges and encumbrances held by the Petitioner as security for the Debtors' obligations to the Petitioner and the Lenders pursuant to the Credit Agreement (the "**Lender Charge**"); and
 - Third – Interim Lender's Charge.

43. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge and the Interim Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.
44. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except (i) those claims contemplated by section 11.8(8) of the CCAA; and (ii) those Encumbrances specifically identified in paragraph 42 hereof.
45. Except as otherwise expressly provided herein, or as may be approved by this Court, the Debtors shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Debtors obtain the prior written consent of the Monitor, the Interim Lender, Petitioner on behalf of the Lenders, and the beneficiaries of the Administration Charge.
46. The Administration Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's 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 Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the 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, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtors; and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Debtors of any Agreement to which it is a party;
 - (b) none of the Charges shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Debtors' entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Debtors pursuant to this Order (including without limitation pursuant to paragraph 11 hereof), the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

47. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Debtors' interest in such real property leases.

SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in either The Vancouver Sun or The Province a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtors of more than \$1000, 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 in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
49. The Debtors and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: www.insolvencies.deloitte.ca/en-ca/sperling.
51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.insolvencies.deloitte.ca/en-ca/sperling.
52. Notwithstanding paragraphs 49 and 51 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order 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 regulations thereto, in respect of the l

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

GENERAL

53. The Petitioner or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.
54. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Debtors, the Business or the Property.
55. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner 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 Debtors and the Monitor and their respective agents in carrying out the terms of this Order.
56. Each of the Debtors and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor 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, including acting as a foreign representative of the Debtors to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.
57. The Debtors may under the direction of the Monitor (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.
58. The Debtors, under the direction of the Monitor, are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.
59. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

60. Any interested party (including the Debtors and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and 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.
61. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.
62. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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

Signature of
☐ Party ☒ Lawyer for the Petitioner

Jordan Schultz

BY THE COURT

REGISTRAR

SCHEDULE "A"

NAME	APPEARING FOR

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS
AMENDED

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

SPERLING GP LTD.
SPERLING LIMITED PARTNERSHIP
1112849 B.C. LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

DENTONS CANADA LLP
BARRISTERS & SOLICITORS
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Vancouver, British Columbia V6C 3R8
Attn: Jordan Schultz
File No. 506954-794

Agent: West Coast Title Search