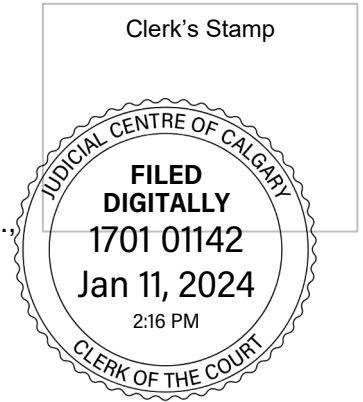


COURT FILE NUMBER 1701-01142
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS CHINA MINSHENG BANKING CORP., LTD.,
HONG KONG BRANCH AND CHINA
MINSHENG BANKING CORP., LTD.,
SHANGHAI BRANCH, AND SONICFIELD
GLOBAL LIMITED, AS SECURED
LENDERS, AND COMPUTERSHARE
TRUST COMPANY OF CANADA, IN ITS
CAPACITY AS COLLATERAL AGENT FOR
AND ON BEHALF OF THE SECURED
LENDERS

DEFENDANTS GRANDE CACHE COAL LP, GRANDE
CACHE COAL CORPORATION, UP
ENERGY (CANADA) LIMITED AND 0925165
B.C. LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT
McCarthy Tétrault LLP
Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
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Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca /
nstewart@mccarthy.ca



NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	January 19, 2024
Time	10:00 a.m.
Where	Webex (See attached Schedule "A")
Before Whom	Honourable Justice Neufeld

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought: Deloitte Restructuring Inc. (“**Deloitte**”) applies for three (3) orders, substantially in the forms attached as Schedules “**B**” (the “**Receivership Order**”), “**C**” (the “**Sale Approval, Vesting, and Discharge Order**”), and “**D**” (the “**Sealing Order**”) hereto:

1. If necessary, abridging the time required for service of this application (the “**Application**”) and supporting materials to the date service was effected, declaring that this Application is properly returnable on January 19, 2024, that service of the Application and supporting materials, as described in the corresponding affidavit of service, is good and sufficient, and that no other persons are entitled to service of the Application or any orders arising therefrom.

2. Re-appointing Deloitte as the receiver and receiver and manager (the “**Receiver**”) of all of the current and future interests of Grande Cache Coal LP and Grand Cache Coal Corporation (collectively, the “**Debtors**”) in the Units (as defined below), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 13(2) of the *Judicature Act*, R.S.A. 2000 (the “**Judicature Act**”).

3. Dispensing with the requirement for the Receiver and its counsel to pass their accounts from time to time.

4. Authorizing the Receiver to enter into the draft asset purchase and sale agreement, dated January 2024 (the “**APA**”), between the Debtors, by and through the Receiver, in its capacity as the court-appointed receiver and manager of the Units, as the vendor, and Eagle Rock Holdings Ltd. (the “**Purchaser**”), as the purchaser, attached as Confidential Appendix “**A**” (“**Confidential Appendix “A”**”) to the Second and Final Report of the Receiver, dated January 9, 2024 (the “**Receiver’s Report**”), to be filed, and approving the sale and transfer of the assets identified in the APA (collectively, the “**Purchased Assets**”) and the transfer and vesting of the Purchased Assets to the Purchaser, and directing and authorizing the Receiver to execute and deliver the APA to the Purchaser and to take any and all such steps as the Receiver determines necessary or advisable to close the transactions for the purchase and sale of the Purchased Assets, as contemplated by the APA.

5. Ordering and declaring that, effective immediately upon the Receiver filing a certificate with this Honourable Court (the “**Closing Certificate**”) confirming that all terms and conditions under the APA and any and all modifications thereto have been either satisfied or waived and that the transactions contemplated by the APA have otherwise been completed to the satisfaction of the

Receiver (subject only to the completion of the transfer of title to the Purchased Assets by the Land Titles Office):

- (a) all legal and beneficial ownership of and title to the Purchased Assets shall vest in the Purchaser (or its designated assignee or nominee to the extent permitted by the APA), free and clear of any and all security interests (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have been attached, registered, perfected, or filed and whether secured, unsecured, liquidated, contingent, or absolute, but subject to the Permitted Encumbrances (as defined in the APA);
- (b) the Debtors and any and all persons claiming through or under the Debtors and any other persons in possession of the Purchased Assets shall deliver up possession of the Purchased Assets to the Purchaser or its assignee or nominee as at the Closing (as that term is defined in the APA);
- (c) authorizing and empowering the Receiver to distribute the net proceeds in order to fully and indefeasibly satisfy any and all debts, liabilities and obligations owing on the Receiver's Charge (as such term is defined in the Receivership Order);
- (d) notwithstanding the pendency of these proceedings or the provisions of any federal or provincial statute, the vesting provisions contained in the order made on the Application:
 - (i) will not be void or voidable at the instance of creditors and claimants;
 - (ii) do not constitute and shall not be deemed to be fraudulent preferences, fraudulent conveyances, transfers at undervalue, or otherwise subject to challenge under the BIA, the *Fraudulent Preferences Act* (Alberta) or any other applicable federal or provincial legislation; and,
 - (iii) do not constitute and shall not be deemed to constitute conduct meriting an oppression remedy.

6. Ordering that, effective immediately upon the Receiver filing the Closing Certificate, the Receiver shall be discharged, and declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to take such steps and actions as it deems

necessary to address any ancillary or incidental matters, as required in connection with its capacity as Receiver following the termination of the within proceedings (the “**Receivership Proceedings**”), and in completing or addressing any such ancillary or incidental matters, Deloitte shall continue to have the benefit of the provisions of all Orders made in the Receivership Proceedings in relation to its capacity as Receiver.

7. Approving the Receiver’s final statement of receipts and disbursements with respect to the Debtors and the Units, as set out in Confidential Appendix “B” (“**Confidential Appendix “B”**”, and collectively with Confidential Appendix “A”, the “**Confidential Appendices**”) to the Receiver’s Report.

8. Declaring that, as of the date of the Receiver’s Report and based on the evidence that is currently before the Court:

- (a) the actions and conduct of the Receiver are approved;
- (b) the Receiver has satisfied all of its duties and obligations as Receiver;
- (c) the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof;
- (d) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver’s duties as receiver and manager of the Debtors or the Units, save and except for any liability arising out of fraud, gross negligence, or wilful misconduct on the part of the Receiver; and,
- (e) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver’s duties and obligations, as receiver and manager of the Debtors and the Units, save and except for any claims based on fraud or wilful misconduct, on the part of the Receiver, shall be forever barred and extinguished.

9. Declaring that no action or proceeding arising from, relating to, or in connection with, the performance of the Receiver’s duties and obligations, as receiver and manager of the Debtors and the Units, may be commenced or continued, without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

10. Sealing the Confidential Appendices, on the Court file, pending the filing of the Closing Certificate or further order of the court.

11. Ordering and declaring that service of any orders arising from this Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, to the persons listed on the service list, present at the Application, or who were otherwise served with the Application, shall constitute good and sufficient service of such orders and that no persons other than those on the service list are entitled to be served with a copy of such orders.

12. Such further and other relief as counsel for the Receiver may advise.

Grounds for making this application: The grounds for the Application are as follows:

Background

Previous Appointments and Receivership Proceedings

13. The Debtors were engaged in the business of metallurgical coal mining in the Municipal District of Greenview (the “**MD of Greenview**”), near Grande Cache, Alberta (the “**Mine**”). Due to low metallurgical coal prices, surface mining operations at the Mine were suspended in January 2015, and underground mining operations at the Mine were suspended in December 2015.

14. Deloitte was initially appointed as the receiver and manager of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Original Property**”), of the Debtors and two related corporations, Up Energy (Canada) Limited and 0925165 B.C. Ltd. (collectively with the Debtors, the “**Original Debtors**”), pursuant to the Consent Receivership Order (the “**Original Receivership Order**”) pronounced by the Honourable Justice K.M. Horner, in the within proceedings, on February 3, 2017. The Original Receivership Order was granted upon the application of the plaintiffs in these proceedings.

15. Deloitte was also appointed as the receiver and manager of specific assets, consisting of certain equipment and the Debtors’ interest in certain lands (which, for clarity, did not include the Units) (collectively, the “**Limited Receivership Assets**”), pursuant to the Receivership Order (the “**Limited Receivership Order**”) pronounced by the Honourable Justice D.B. Nixon, in the proceedings under Court File Number 1601-12153 (the “**Limited Receivership Proceedings**”), on

January 24, 2017. The Limited Receivership Order was granted upon the application of HSBC Bank Canada, the plaintiff in the Limited Receivership Proceedings.

16. The Limited Receivership Proceedings and these Receivership Proceedings continued in parallel during the period in which the Receiver was appointed over the Original Property and the Limited Receivership Assets. As described in further detail below, the Receiver was subsequently discharged within both proceedings, re-appointed in the within Receivership Proceedings pursuant to the Second Receivership Order (as defined below), and discharged for a second time in the within proceedings pursuant to the Second Discharge Order (as defined below).

17. On July 5, 2017, this Honourable Court pronounced an Order (the “**SISP Order**”) in the within Receivership Proceedings, which approved a sales and investment solicitation process (the “**SISP**”) to be conducted by the Receiver.

18. The Original Property and the Limited Receivership Assets were marketed within the SISP.

19. On January 8, 2018, in these Receivership Proceedings, the Honourable Justice K.M. Horner pronounced the:

- (a) Order (Approval of DIP Term Sheet and Receivership Order Amendment) (the “**DIP and Amendment Order**”), *inter alia*, approving a debtor in possession financing term sheet between the Debtors and Sonicfield Global Limited (“**Sonicfield Global**”), and amending and increasing the maximum amount of the Receiver’s Borrowings Charge (as defined in the Original Receivership Order); and,
- (b) Order (Sale Approval and Vesting Order) (the “**SAVO**”), *inter alia*, approving an agreement of purchase and sale, dated December 22, 2017 (the “**Sonicfield APA**”), between the Debtors, by and through the Receiver, as vendors, and Sonicfield Global, as purchaser.

20. The Sonicfield APA contemplated the purchase, by Sonicfield Global, of the majority of the Original Property, and all of the Limited Receivership Assets.

21. Sonicfield Global incorporated a new entity, CST Canada Coal Limited (“**CST Coal**”), for the purpose of closing the Sonicfield APA.

22. CST Coal determined that it would not purchase the Units (as defined below) as part of the Sonicfield APA, and excluded the Units from the Sonicfield APA, due to various issues concerning the sale and transfer of the Units, as described in further detail below. Accordingly, the Units were not sold or realized upon in connection with the SAVO or the Sonicfield APA.

23. The Sonicfield APA closed on July 18, 2018.

The Units

24. The Debtors own thirty-two (32) of the thirty-four (34) residential condominium units located at 3 Main Street, in the Hamlet (previously, Town) of Grande Cache (the "**Town**"), legally described as:

CONDOMINIUM PLAN 0925042

UNITS 11-19, 21 TO 31, AND 33 TO 44

Together with the Debtors' fractional share of the common property of Condominium Corporation 0925042

(the "**Units**").

25. The Units were occupied by employees and temporary staff of the Debtors until the mining operations at the Mine were suspended in 2015. The remainder of the condominium property consists of ten (10) commercial units which are not owned by the Debtors.

26. In 2012, the Town issued a stop order (the "**Stop Order**") in respect of the Units, and subsequently detailed various deficiency repairs which were estimated to cost in excess of \$2.3 million to rectify, and denied occupancy in respect of the Units.

27. The Receiver made efforts to sell the Units in 2018, including:

- (a) obtaining an independent appraisal report prepared by Colliers International Valuation & Advisory Services ("**Colliers**") in respect of the Units;
- (b) making efforts to facilitate a sale to CST Coal, which were ultimately unsuccessful when CST Coal advised the Receiver, on April 24, 2018, that it had determined the Units were not viable and would be excluded from the APA;

- (c) retaining CBRE Limited (“**CBRE**”), a national real estate brokerage, to conduct a marketing process in respect of the Units (the “**Marketing Process**”). The Marketing Process was launched in July 2018 and canvassed a broad group of prospective purchasers, several of which expressed interest and contacted the Town to assess the viability of the Units. However, no party advanced an offer to purchase the Units. The Receiver’s understanding was that this was due to the Units being uneconomic, including as occupancy permits could not be obtained and the Town was unwilling to waive the deficiency repairs.

28. The Town determined it was no longer viable as a standalone municipality and a plebiscite held on September 25, 2018, resulted in an affirmative vote to dissolve. The Town thus applied to the Minister of Municipal Affairs and was granted approval to be dissolved, and concurrently became a hamlet subject to the administration of the MD of Greenview, effective January 1, 2019.

29. On October 29, 2018, the Receiver wrote to the Town (the “**October 2018 Letter**”) to advise that it was abandoning its interest in the Units and would not advance further receivership estate funds in respect of the Units.

Initial Discharge Applications and Second Receivership Order

30. The majority of the administration of the receivership estate was concluded in late 2018. Accordingly, Deloitte sought its discharge, as Receiver, in these Receivership Proceedings and the Limited Receivership Proceedings.

31. The Limited Receivership Proceedings were terminated, and Deloitte was discharged as the receiver and manager of the Limited Receivership Assets, pursuant to the Order (Discharge of Receiver) (the “**Limited Receivership Proceedings Discharge Order**”), pronounced by the Honourable Justice B.E.C. Romaine on November 28, 2018 within the Limited Receivership Proceedings.

32. Following the delivery of the October 2018 Letter, further discussions occurred between the Receiver, the Town, and the MD of Greenview, concerning the potential sale and transfer of the Units. At the request of the MD of Greenview, concurrently with its application for discharge as Receiver of the Original Debtors and the Original Property, Deloitte applied for the Second Receivership Order (as defined below), in order to permit Deloitte to act as Receiver of the Units until such time as the MD of Greenview had an opportunity to assess the future viability of the Units.

33. On November 28, 2018, upon Deloitte's application, the Honourable Justice Romaine pronounced two (2) orders in these Receivership Proceedings:

- (a) the Order (Discharge of Receiver) (the "**First Discharge Order**"), *inter alia*, (i) discharging Deloitte as the Receiver of the Original Debtors and the Original Property; (ii) approving the actions and conduct of the Receiver, the final statement of receipts and disbursements, and the interim and final accounts for the fees and disbursements of the Receiver and its legal counsel; and, (iii) ordering that, notwithstanding the discharge of the Receiver, the Receiver would remain empowered to perform any act necessary or incidental to the conclusion of the receivership of the Original Debtors or the Original Property; and,
- (b) the Receivership Order (the "**Second Receivership Order**"), *inter alia*, (i) appointing Deloitte as Receiver, effective on November 29, 2018 at 12:01 a.m., of the Debtors' interest in the Units, (ii) authorizing the Receiver to sell, convey, transfer, or assign the Units or any part or parts thereof out of the ordinary course of business to the Town or the MD of Greenview, and to apply for any vesting order or other orders necessary to convey the Units or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Units; and (iii) granting the Receiver a charge against the Units, in the maximum amount of \$45,000, to secured the fees and disbursements of the Receiver and its counsel (the "**Second Receiver's Charge**").

34. The MD of Greenview indicated that it would require sixty (60) days to complete its assessment of the viability of the Units. Accordingly, the Receiver and the MD of Greenview entered into a Facility Agreement (the "**MD Facility Agreement**"), on November 28, 2018.

35. The Receiver issued a Receiver's Certificate in the amount of \$20,000 to the MD of Greenview on January 16, 2019, and those funds were provided to the Receiver on January 31, 2019.

36. The MD of Greenview delivered a draft purchase agreement, with respect to the Units, to the Receiver, on January 29, 2019, at which time negotiations commenced.

37. The Receiver issued a second Receiver's Certificate in the amount of \$20,000 to the MD of Greenview on March 1, 2019. Those funds were not provided to the Receiver.

38. On April 11, 2019, with no agreement in place, the Receiver proposed a framework to conclude the sale of the Units, which contemplated, *inter alia*, that the MD of Greenview would fund the borrowing facility under the MD Facility Agreement in full; the effective date of the sale would be February 15, 2019; the MD of Greenview would assume the expenses incurred on account of utilities from and after February 15, 2019; and, the MD of Greenview would assume and deal with unpaid municipal property taxes and unpaid condominium fees in respect of the Units.

39. On May 1, 2019, the MD of Greenview advised the Receiver that it was not prepared to proceed with the proposed framework. Accordingly, the Receiver was left with no choice but to disclaim its interest in the Units.

40. The Receiver was unable to administer the receivership estate as a result of funds not being advanced to the Receiver, and the receivership under the Second Receivership Order continuing for approximately six (6) months longer than originally anticipated.

41. On August 1, 2019, upon Deloitte's application, the Honourable Justice Horner pronounced the Order (Discharge of Receiver) (the "**Second Discharge Order**"), in the within proceedings. Pursuant to the Second Discharge Order, *inter alia*:

- (a) Deloitte was discharged as Receiver of the Units, provided that, notwithstanding the discharge of the Receiver, the Receiver would remain empowered to perform any act necessary or incidental to the conclusion of the receivership of the Debtors or the Property (as defined in the Second Receivership Order, being the Units);
- (b) the Receiver's actions and conduct, final statement of receipts and disbursements, and the final accounts for the fees and disbursements of the Receiver and its legal counsel, were approved;
- (c) the maximum amount of the Second Receiver's Charge was increased from \$45,000 to \$113,000 (the "**Amended Receiver's Charge**"), on account of certain unpaid fees of the Receiver and its counsel; and,

- (d) the Receiver was authorized to register the Amended Receiver's Charge against the Certificate of Title to the Units, with the priority granted under the Second Receivership Order.

42. The Amended Receiver's Charge has been registered against the Certificates of Title to the Units by way of caveat (the "**Receiver's Caveat**").

Post-Receivership Events and the APA

43. On or about July 31, 2023, Deloitte was approached by the Purchaser, a party familiar with the Units, who expressed interest in acquiring the Units.

44. The Purchaser owns eight (8) of the commercial units located in the same condominium property as the Units. As detailed in the Receiver's Report, the Purchaser has advised that if the APA is approved, it intends to complete certain remediation activities with respect to the Units and the commercial units, and has already completed certain preliminary steps in connection with same.

45. On November 8, 2023, the Purchaser submitted an unsolicited offer to Deloitte, accompanied by a deposit, in connection with the Purchaser's proposed transaction.

46. Deloitte and the Purchaser commenced negotiations concerning the terms upon which Deloitte would seek its re-appointment as Receiver of the Units, and Court approval of the sale transaction, which ultimately resulted in the APA.

47. The material terms of the APA include:

- (a) the purchase price to be paid by the Purchaser, for the Units, consists of: (i) a cash payment in an amount set out in the Confidential Appendices (the "**Cash Payment**"); and, (ii) the assumption of certain "**Assumed Liabilities**", as defined in the APA, including: (A) all liabilities in respect of any outstanding municipal property taxes against or in respect of the Units; (B) liabilities relating to the Units following closing of the APA; (C) all environmental claims and liabilities related to or arising out of the Units; and, (D) any amounts in priority to the Receiver's Caveat and the charges secured thereby;

- (b) the APA is subject to certain conditions precedent including, among others, that (A) the Receiver shall be re-appointed over the Units prior to its performance of the APA; (B) the APA shall receive the approval of this Honourable Court; and, (C) the Purchaser and the MD of Greenview shall have entered into a tax payment plan with respect to municipal taxes, or otherwise the Purchaser shall have paid and satisfied, in full, all outstanding municipal taxes, prior to the closing date; and,
- (c) subject to the Expense Reimbursement (as defined below), the parties shall bear their own costs with respect to the APA.

48. The Cash Payment contemplated by the APA is sufficient to pay, in full, the amounts secured by the Amended Receiver's Charge, along with the anticipated costs to complete the closing of the APA and the administration of the receivership estate, should the Receiver be re-appointed by this Honourable Court.

49. On or around December 20, 2023, another third-party potential purchaser, unrelated to the Purchaser, also approached Deloitte to express interest in the Units. These discussions have not yet resulted in any formal bid or offer from the third party.

50. The APA contemplates that, in the event that Deloitte is re-appointed as Receiver of the Units and: (i) an alternative transaction with respect to the Units is approved by the Court; and, (ii) closing of that alternative transaction occurs in accordance with such Court approval, then the Purchaser shall be entitled to receive full reimbursement of its reasonable, out of pocket costs, fees, and expenses (including, without limitation, legal fees as between a solicitor and their own client) incurred directly in connection with the preparation, negotiation, the preparation, negotiation, and execution of the APA and the consummation or attempted consummation of the transaction thereunder (the "**Expense Reimbursement**"), which costs, fees, and expenses shall be proven and substantiated by evidence satisfactory to the Receiver, in its reasonable discretion; and further provided that the amount of the Expense Reimbursement shall be limited to, and in no case shall exceed, \$20,000 (twenty thousand Canadian dollars).

Court Approval of the APA

51. A commercially reasonable and fair marketing process was conducted with respect to the Units in 2018 under the Original Receivership Order, including through: (i) the inclusion of the Units

in the SISP; and, (ii) the Marketing Process conducted by CBRE with respect to the Units, which both resulted in no offers.

52. The subsequent negotiations with the Town and the MD of Greenview, following the pronouncement of the Second Receivership Order, also failed to result in a transaction.

53. The costs and risks of pursuing a further sales process with respect to the Units outweigh the potential benefits of same, particularly given the challenges associated with completing the sale and transfer of the Units, and due to the significant liabilities associated with the Units. Among other reasons, the Units require significant repairs before an occupancy permit may be issued, and the Units remain subject to accrued municipal property tax arrears.

54. The price to be paid for the Units being sold pursuant to the APA represents the highest and best price that can be obtained for the Units in the circumstances, and the APA, as proposed, is in the best interests of the estate of the Debtors and the stakeholders of the Debtors.

Sealing Order

55. The Receiver's Report includes commercially sensitive and confidential information, including the price to be paid pursuant to the APA, in the Confidential Appendices. The public disclosure and dissemination of the information in the Confidential Appendices would cause serious and irreparable harm to the estates of the Debtors and their stakeholders in the event that the APA failed to close and the Receiver was forced to remarket the Units. The limited sealing provision that the Receiver seeks on the Application, in respect of the Confidential Appendices, is a fair and reasonable method of addressing the serious and irreparable harm that would result if the Confidential Appendices were publically disseminated.

Discharge Provisions

56. Providing that the transaction contemplated by the APA closes and the Closing Certificate is filed by the Receiver, the administration of the receivership estate will be substantially complete. It is reasonable and appropriate to discharge the Receiver following the completion of the transaction.

Professional Fees

57. The fees and disbursements of the Receiver and its counsel, incurred in connection with the Second Receivership Order, were previously approved by this Honourable Court pursuant to the Second Discharge Order. The Second Discharge Order also contemplated the registration of the Receiver's Caveat against title to the Units, to secure such fees and disbursements, due to there being insufficient funds available in the estate at that time. The proposed Receiver is not aware of any creditors of the Debtors with an interest in or relating to the Units, other than the MD of Greenview, certain utilities providers, and the Receiver's Caveat, all of which are to be paid or satisfied in full if the APA is approved and the transaction contemplated thereunder closes. The remaining matters to be completed in connection with the administration of the receivership estate, if the Receiver is so re-appointed, primarily relate to the closing of the APA and certain ancillary matters, as set out in further detail in the Receiver's Report. On the basis of the foregoing considerations, the Receiver respectfully submits that it is appropriate in the circumstances to dispense with any further requirement for the passing of the Receiver's and its legal counsel's accounts.

58. Such further and other grounds as counsel for the Receiver may advise.

Material or Evidence to be relied On: The Receiver will rely on the following materials:

59. The Receiver's Report, to be filed.

60. The First and Final Report of the Receiver, dated July 22, 2019, filed.

61. The Supplement to the First and Final Report of the Receiver, dated July 29, 2019, filed.

62. Such further and other material as counsel for the Receiver may advise.

Applicable rules:

63. Rule 6.3, 6.9, 6.28, and 11.27 of the Alberta Rules Of Court, Alta. Reg. 124/2010.

64. Such further and other rules as counsel for the Receiver may advise.

Applicable Acts and Regulations:

65. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

66. Such further and other acts and regulations as counsel for the Receiver may advise.

Any irregularity complained of or objection relied on:

67. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

68. The Receiver proposes that the Application be heard virtually by WebEx with one, some, or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A" WEBEX DETAILS

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE "B"
RECEIVERSHIP ORDER

See attached.

COURT FILE NUMBER 1701-01142

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF CHINA MINSHENG BANKING CORP., LTD., HONG KONG BRANCH AND CHINA MINSHENG BANKING CORP., LTD., SHANGHAI BRANCH, AND COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS COLLATERAL AGENT FOR AN ON BEHALF OF THE SECURED LENDERS

DEFENDANTS GRANDE CACHE COAL LP, GRANDE CACHE COAL CORPORATION, UP ENERGY (CANADA) LIMITED AND 0925165 B.C. LTD.

DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT McCarthy Tétrault LLP
Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Attention: Pantelis Kyriakakis / Nathan Stewart
Phone: 403-260-3536 / 3534
Fax: 403-260-3501
Email: pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: January 19, 2024

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Justice Neufeld

UPON the application (the "**Application**") of Deloitte Restructuring Inc. ("**Deloitte**") in respect of Grande Cache Coal LP and Grand Cache Coal Corporation (the "**Debtors**"); **AND UPON** having read the Application, the Second and Final Report of the Receiver, dated January 9, 2024 (the "**Report**"), and the Affidavit of Service of Katie Hynne, sworn on January ____, 2024 (the "**Service Affidavit**"), all filed; **AND UPON** reading the consent of Deloitte to act as receiver and receiver and manager (the "**Receiver**") of certain assets, properties, and undertakings of the Debtors, filed; **AND UPON** counsel for the proposed Receiver, and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application for this order (the “**Order**”) and the Report is hereby abridged, if necessary, the Application is properly returnable today, service of the Application and the Report on the service list (the “**Service List**”) attached as Exhibit “A” to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the Service List, are entitled to service of the Application and the Report.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2, Deloitte is hereby appointed Receiver, without security, of all of the Debtors’ current and future interests in the lands and premises legally described as:

CONDOMINIUM PLAN 0925042

UNITS 11-19, 21 TO 31, AND 33 TO 44

Together with the Debtors’ fractional share of the common property of Condominium Corporation 0925042

(collectively, the “**Property**”).

RECEIVER’S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage counsel and agents from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (j) to sell, convey, transfer, or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court;

- (k) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and,
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver

all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended, pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body’s investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. “**Regulatory Body**” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against, concerning, or in respect of, the Debtor or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with, or continued except with the written consent of the Receiver or leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership, or operating agreement, joint venture agreement, or any such similar agreements or arrangements to which the Debtor is a party that purport to effect or cause a cessation of operatorship or any other rights, as a result of the occurrence of any default or non-performance by or the insolvency of the Debtor, the making or filling of these proceedings or any allegation, admission, or evidence in these proceedings, provided, however, that this stay and suspension does not apply in

respect of any “eligible financial contract” (as defined in the BIA), and further provided that nothing in this Order shall:

- (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
- (b) prevent the filing of any registration to preserve or perfect a security interest;
- (c) prevent the registration of a claim for lien; or,
- (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.

NO INTERFERENCE WITH THE RECEIVER

10. 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 Debtor, except with the written consent of the Receiver, or with leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. 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 Debtor, 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 Debtor,

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 Debtor, or exercising any other remedy provided under such agreements or arrangements. The Debtor 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 Debtor in accordance with the payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider and the Debtor, by and through the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

LIMITATIONS ON ENVIRONMENTAL LIABILITIES

13. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply

with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

14. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

15. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, incurred prior to and after the date of this Order, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4), 81.6(2), and 88 of the BIA.
16. The requirement for the Receiver and its legal counsel to pass their accounts from time to time is hereby dispensed with.
17. The Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel.

FUNDING OF THE RECEIVERSHIP

18. The Receiver is at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), 81.6(2), and 88 of the BIA.

19. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
20. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
21. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.
22. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

GENERAL

23. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
24. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
26. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant

representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
28. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
29. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILING

30. The Receiver shall establish and maintain a website in respect of these proceedings at <http://www.insolvencies.deloitte.ca/> (the "**Receiver's Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
31. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
and,

(b) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

32. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

**SCHEDULE "A" TO THE RECEIVERSHIP ORDER
RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT: \$ _____

1. THIS IS TO CERTIFY that DELOITTE RESTRUCTURING INC., the receiver and receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of GRANDE CACHE COAL CORPORATION by Order of the Court of King's Bench of Alberta (the "**Court**") dated the 19th day of January, 2024 (the "**Order**") made in action number 1701-01142, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of **\$250,000** that the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**] [**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of ATB Financial from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at [●].
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

DELOITTE RESTRUCTURING INC., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE "C"
SALE APPROVAL, VESTING AND DISCHARGE ORDER

See attached.

Clerk's Stamp

COURT FILE NO. 1701-01142

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CHINA MINSHENG BANKING CORP., LTD., HONG KONG BRANCH AND CHINA MINSHENG BANKING CORP., LTD., SHANGHAI BRANCH, AND SONICFIELD GLOBAL LIMITED, AS SECURED LENDERS, AND COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS COLLATERAL AGENT FOR AND ON BEHALF OF THE SECURED LENDERS

DEFENDANTS GRANDE CACHE COAL LP, GRANDE CACHE COAL CORPORATION, UP ENERGY (CANADA) LIMITED AND 0925165 B.C. LTD.

DOCUMENT ORDER (Sale Approval, Vesting, and Discharge of Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
Phone: 403-260-3531 / 3536 / 3534
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: January 19, 2024

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Justice Neufeld

UPON the application (the "**Application**") of Deloitte Restructuring Inc., in its capacity as the court-appointed receiver and manager (the "**Receiver**") of certain condominium units owned by Grande Cache Coal LP and Grande Cache Coal Corporation (the "**Debtors**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") to be entered into between the Receiver and Eagle Rock Holdings Ltd. (the "**Purchaser**"), dated January 2024; **AND UPON** reading the receivership order (the "**Receivership Order**") pronounced by the Honourable Justice Neufeld on January 19, 2024 in the within proceedings and the Second and Final Report of the Receiver, dated January 9,

2024 (the “**Receiver’s Report**”), filed in support of the Application to vest in the Purchaser (or its nominee) the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”); **AND UPON** having read the Confidential Appendices to the Receiver’s Report; **AND UPON** reading the Affidavit of Service of Katie Hynne, sworn on January ●, 2024 (the “**Service Affidavit**”); **AND UPON** hearing from counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Receiver’s Report is abridged, the Application is properly returnable today, service of the Application and the Receiver’s Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Second Receiver’s Report.

DEFINITIONS

2. Capitalized terms used in this Order and not otherwise defined shall have the same meaning as is ascribed to such terms in the Receivership Order.

APPROVAL OF TRANSACTIONS

3. The Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

4. Upon the delivery of a Receiver’s certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule “**A**” hereto (the “**Closing Certificate**”), confirming that all terms and conditions under the APA and any and all modifications thereto have been either satisfied or waived and that the transactions contemplated by the APA have otherwise been completed to the satisfaction of the Receiver (subject only to the completion of the transfer of title to the Purchased

Assets by the Land Titles Office), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
- (c) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, caveats, easements and restrictive covenants listed on Schedule "D"); and,

for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. Upon the delivery of the Closing Certificate, and upon the filing of a certified copy of this Order, together with any applicable registration fees, the Registrar of Land Titles of Alberta (the "Registrar") is hereby authorized, requested, and directed to cancel the existing Certificates of Title for those lands and premises municipally described as 201 to 209, 211 to 221, and 223 to 244, 3 Main Street, Grande Cache, Alberta, and legally described as:

CONDOMINIUM PLAN 0925042

UNITS 11-19, 21 TO 31, AND 33 TO 44

Together with the Debtors' fractional share of the common property of Condominium Corporation 0925042

(the "Lands")

and to issue new Certificates of Title for the Lands in the name of the Purchaser (or its nominee), namely, Eagle Rock Holdings Ltd., and to register such transfers, discharges, discharge statements of conveyances, as may be required to convey clear title to the Lands to the Purchaser (or its nominee), which Certificate of Title shall be subject only to those encumbrances (the "**Permitted Encumbrances**") listed on Schedule "**D**" hereto.

6. Upon the delivery of the Closing Certificate, and upon the filing of a certified copy of this Order, together with any applicable registration fees, the Registrar or Registrars under the *Land Titles Act* (Alberta), the Alberta Department of Energy and the Minister of Energy of Alberta, and all other government ministries and authorities in Alberta, respectively, exercising jurisdiction with respect to or over the Purchased Assets (collectively, the "**Government Authorities**"), as applicable, are hereby authorized, requested and directed to (in each case as applicable):

- (a) enter the Purchaser as the owner, lessee, and/or licensee of the Purchased Assets;
- (b) cancel the existing Certificates of Title to the Purchased Assets and issue new Certificates of Title for the Purchased Assets, in the name of the Purchaser (or its nominee);
- (c) delete and expunge from the existing title documents concerning the Purchased Assets all applicable Claims including Encumbrances, other than Permitted Encumbrances; and
- (d) register such transfers, discharges, discharge statements, or conveyances, as may be required to convey clear title to the Purchased Assets to the Purchaser, subject only to the Permitted Encumbrances.

7. This Order shall be registered and the steps directed to be carried out shall be carried out by the applicable Registrar and/or Government Authorities notwithstanding the requirements of the applicable federal and provincial legislation including but not limited to the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

NET PROCEEDS

8. For the purposes of determining the nature and priority of the Claims, the net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Closing Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. Upon the filing of the Closing Certificate and from time to time thereafter, the Receiver is authorized and empowered to distribute the net proceeds in order to fully and indefeasibly satisfy any and all debts, liabilities and obligations owing on the Receiver's Charge (as such term is defined in the Receivership Order).

10. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtors.

11. From and after the filing of the Closing Certificate, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

12. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by or through or against the Debtors.

13. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtors.

14. The Receiver is to file with the Court a copy of the Closing Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).

15. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors,

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

APPROVAL OF ACTIVITIES

17. The Receiver's activities, as set out in the Receiver's Report and in all of its other reports, supplements, affidavits, pleadings, and materials, filed in the within proceedings, and the Receiver's final statement of receipts and disbursements, as set out in **Confidential Appendix "B"** of the Receiver's Report, are hereby ratified and approved.

18. On the evidence that is currently before this Honourable Court:

- (a) the actions and conduct of the Receiver are approved;
- (b) the Receiver has satisfied all of its duties and obligations as receiver and manager of the Property;

- (c) the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof; and,
- (d) effective immediately upon the filing of the Closing Certificate, the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver. Subject to the foregoing, any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations, as receiver and manager of the Property, save and except for any claims based on fraud or wilful misconduct, on the part of the Receiver, shall be and hereby are forever barred and extinguished.

DISCHARGE

19. Effective immediately upon the filing of the Closing Certificate:

- (a) the Receiver shall be discharged as receiver and manager of the Property;
- (b) notwithstanding the discharge of the Receiver in accordance with this Order, the Receiver remains empowered to perform any act necessary or incidental to the conclusion of the receivership of the Property, and in addressing such ancillary or incidental matters, Deloitte Restructuring Inc. shall continue to have the benefit of the provisions of all orders made in the within proceedings in its capacity as Receiver. The Receiver shall pay the reasonable fees and disbursements of the Receiver and its counsel from monies on hand up to the amounts detailed in the Receiver's Report; and,
- (c) no action or proceeding arising from, relating to or in connection with the performance of the Receiver's duties and obligations as receiver and manager of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.

MISCELLANEOUS MATTERS

20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

21. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

22. Service of this Order on any party not attending this Application is hereby dispensed with.

J.C.C.K.B.A.

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL, VESTING AND DISCHARGE)
RECEIVER'S DISCHARGE CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER	1701-01142
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	CHINA MINSHENG BANKING CORP., LTD., HONG KONG BRANCH AND CHINA MINSHENG BANKING CORP., LTD., SHANGHAI BRANCH, AND SONICFIELD GLOBAL LIMITED, AS SECURED LENDERS, AND COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS COLLATERAL AGENT FOR AND ON BEHALF OF THE SECURED LENDERS
DEFENDANTS	GRANDE CACHE COAL LP, GRANDE CACHE COAL CORPORATION, UP ENERGY (CANADA) LIMITED AND 0925165 B.C. LTD.
DOCUMENT	RECEIVER'S CLOSING CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart Tel: 403-260-3531 / 3536 / 3534 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

RECEIVER'S CLOSING CERTIFICATE

1. All capitalized terms used in this Receiver's Closing Certificate and not otherwise defined shall have the meaning ascribed to them in the Order (Sale Approval, Vesting, and Discharge) pronounced by the Honourable Justice Neufeld of the Court of King's Bench of Alberta, Judicial District of Calgary (the "**Court**"), in the within proceedings, on January 19, 2024 (the "**Order**").
2. Pursuant to an Order of the Court dated January 19, 2024, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of certain condominium units owned by Grande Cache Coal LP and Grande Cache Coal Corporation (collectively, the "**Debtors**").

3. Pursuant to the Order, the Court approved the agreement of purchase and sale (the “**Sale Agreement**”) made by the Debtors, by and through the Receiver, as vendor, and Eagle Rock Holdings Ltd. (the “**Purchaser**”), as purchaser, and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets (as defined in the Order), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate (this “**Closing Certificate**”) confirming that all terms and conditions under the Sale Agreement and any and all modifications thereto have been either satisfied or waived and that the Transactions contemplated by the Sale Agreement have otherwise been completed to the satisfaction of the Receiver, subject only to the completion of the transfer of title to the Purchased Assets by the Land Titles Office.
4. Pursuant to the Order, the Court provided for the discharge of the Receiver, upon the filing of this Closing Certificate by the Receiver.

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

1. All terms and conditions under the Sale Agreement and any and all modifications thereto have been either satisfied or waived and that the Transactions contemplated by the Sale Agreement have otherwise been completed to the satisfaction of the Receiver, subject only to the completion of the transfer of title to the Purchased Assets by the Land Titles Office.

DATE THIS ____ DAY OF _____, 2024

DELOITTE RESTRUCTURING INC., in its capacity as the court-appointed receiver and manager of certain condominium units of **GRANDE CACHE COAL LP AND GRANDE CACHE COAL CORPORATION**, and not in its personal or corporate capacity.

Per: _____
Name:
Title:

SCHEDULE "B"
PURCHASED ASSETS

All of the Debtors' right, title and interest in and to those lands and premises municipally described as 201 to 209, 211 to 221, and 223 to 244, 3 Main Street, Grande Cache, Alberta, and legally described as:

CONDOMINIUM PLAN 0925042

UNITS 11-19, 21 TO 31, AND 33 TO 44

Together with the Debtors' fractional share of the common property of Condominium Corporation 0925042

SCHEDULE "C"
ENCUMBRANCES

Instrument Number	Date	Particulars
232 284 765	19/09/2023	Caveat Re: Agreement Charging Land Caveator - Deloitte Restructuring Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Instrument Number	Date	Particulars
082 442 472	08/10/2008	Utility Right of Way Grantee - The Town of Grande Cache
092 149 496	12/05/2009	Utility Right of Way Grantee - The Town of Grande Cache
212 087 310	14/04/2021	Tax Notification By - Municipal District of Greenview No. 16

**SCHEDULE "D"
SEALING ORDER**

See attached.

Clerk's Stamp

COURT FILE NUMBER 1701-01142

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CHINA MINSHENG BANKING CORP., LTD., HONG KONG BRANCH AND CHINA MINSHENG BANKING CORP., LTD., SHANGHAI BRANCH, AND SONICFIELD GLOBAL LIMITED, AS SECURED LENDERS, AND COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS COLLATERAL AGENT FOR AND ON BEHALF OF THE SECURED LENDERS

DEFENDANTS GRANDE CACHE COAL LP, GRANDE CACHE COAL CORPORATION, UP ENERGY (CANADA) LIMITED AND 0925165 B.C. LTD.

DOCUMENT **ORDER (SEALING ORDER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
Suite 4000, 421 - 7 Avenue S.W.
Calgary, AB T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis / Nathan Stewart
Tel: 403-260-3531 / 3536 / 3534
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: January 19, 2024

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice Neufeld

LOCATION OF HEARING: Calgary, Alberta

UPON the application (the "**Application**") of Deloitte Restructuring Inc., in its capacity as the court-appointed receiver and manager (the "**Receiver**") of certain condominium units owned by Grande Cache Coal LP and Grande Cache Coal Corporation (collectively, the "**Debtors**") pursuant to the Receivership Order granted on January 19, 2024 (the "**Receivership Order**") in the within proceedings (the "**Proceedings**"); **AND UPON** having read the Second and Final Report of the Receiver, dated January 9, 2024 (the "**Receiver's Report**"); **AND UPON** having read the Confidential Appendix "A" and Confidential Appendix "B" to the Receiver's Report, dated January 9, 2024 (collectively, the "**Confidential Appendices**"); **AND UPON** having read the Affidavit of

Service of Katie Hynne, sworn on January 9, 2024 (the “**Service Affidavit**”); **AND UPON** hearing counsel for the Receiver and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Receiver’s Report is abridged, the Application is properly returnable today, service of the Application and the Receiver’s Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Second Receiver’s Report.

SEALING

2. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application and the Clerk of the Court is hereby directed to seal the Confidential Appendices, on the Court file, until the filing of the Closing Certificate (as defined in and contemplated by the Sale Approval and Vesting Order made in connection with the Application) or further order of the Court. The Confidential Appendices shall be sealed and filed in an envelope containing the following endorsement:

THIS ENVELOPE CONTAINS THE CONFIDENTIAL APPENDICES TO THE SECOND AND FINAL REPORT OF THE RECEIVER, DATED JANUARY 9, 2024 (THE “REPORT”). THE CONFIDENTIAL APPENDICES TO THE REPORT ARE SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE NEUFUELD, DATED JANUARY 19, 2024, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICLY ACCESSIBLE UNTIL THE FILING OF THE RECEIVER’S CLOSING CERTIFICATE REFERRED TO IN THE SALE APPROVAL, VESTING, AND DISCHARGE ORDER PRONOUNCED ON JANUARY 19, 2024, OR FURTHER ORDER OF THE COURT.

3. Any person may apply, on reasonable notice to the Receiver and any other persons likely to be affected, to vary or amend the terms of paragraph 2 of this Order.

4. Service of this Order on the Service List by email, facsimile, registered mail, courier, personal delivery shall constitute good and sufficient service of this Order, and no persons other than the persons listed on the Service List are entitled to be served with a copy of this Order. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

5. Service of this Order on any party not attending this application is hereby dispensed with.

Justice of the Court of King's Bench of Alberta