

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
COMMERCIAL DIVISION
(Sitting as a court designated pursuant to the
Companies' Creditors' Arrangement Act,
R.S.C. 1985, c. C-36)

N°: 500-11-

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

GRADEK ENERGY INC., a legal person duly
constituted under the *Canada Business Corporations
Act*, having its principal place of business at 162 blvd.
Brunswick, Pointe-Claire, Québec, H9R 5P9

and

GRADEK ENERGY CANADA INC., a legal person duly
constituted under the *Canada Business Corporations
Act*, having its principal place of business at 162 blvd.
Brunswick, Pointe-Claire, Québec, H9R 5P9

Petitioners

and

R H S T DEVELOPMENT INC., a legal person duly
constituted under the *Canada Business Corporations
Act*, having its principal place of business at 366 De La
Rosaie Street, Rosemère, Québec, J7A 4N2

and

THOMAS GRADEK, domiciled and residing at 366 De
La Rosaie Street, Rosemère, Québec, J7A 4N2

Mis en cause

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC., a legal
person duly constituted under the *Canada Business
Corporations Act*, having a place of business at 1 Place
Ville-Marie, Suite 3000, Montréal, Québec, H3B 4T9

Monitor

**AMENDED MOTION FOR AN INITIAL ORDER UNDER SECTION 11 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT (R.S.C. 1985, c. C-36)**

TO THE HONOURABLE JUDGE JEAN-YVES LALONDE OF THE SUPERIOR COURT, DISTRICT OF MONTREAL, SITTING IN COMMERCIAL DIVISION, THE PETITIONERS RESPECTFULLY STATE:

I. NATURE OF THE MOTION

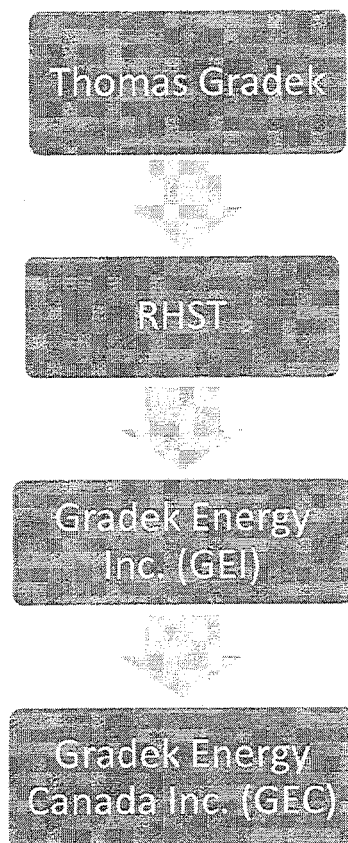
1. The Petitioners, Gradek Energy Inc. (" **GEI** ") and Gradek Energy Canada Inc. (" **GEC** " and collectively, " **Gradek Energy** "), hereby seek an order (the " **Initial Order** ") under the *Companies' Creditors Arrangement Act* (" **CCAA** ") which would, *inter alia*:
 - a) declare that GEI and GEC are companies in respect of which the CCAA applies;
 - b) in respect of the Petitioners and each Mis en cause, RHST Development Inc. (" **RHST** ") and Thomas Gradek, stay all proceedings and remedies taken or that might be taken in respect of the Petitioners or any Mis en cause or any of their assets without prior leave of the court, except as otherwise set forth in the Initial Order;
 - c) authorize the Petitioners to carry on business in a manner consistent with the preservation of their property and to make certain payments in connection with their respective businesses;
 - d) authorize the Petitioners to borrow a maximum amount of \$700,000 under an interim financing facility secured by a priming charge;
 - e) appoint Samson Bélair/Deloitte & Touche Inc. as monitor of the Petitioners under the CCAA;
 - f) authorize the implementation of numerous measures that are required in order to facilitate the proposed restructuring; and
 - g) declare that the Petitioners may, at any time, ask the Court to grant any other measure necessary to the restructuring of the Petitioners.
2. The Petitioners request the Initial Order for the following reasons:
 - a) GEI and GEC are debtor companies within the meaning of section 2 of the CCAA;
 - b) the Petitioners are insolvent as they are no longer able to meet their obligations as they become due;
 - c) the Petitioners intend to reorganize their finances and their operations and will prepare a plan of arrangement with their creditors in order to compromise their debts; and

- d) the Petitioners have more than five million dollars of claims as defined in section 12 of the CCAA.

II. CORPORATE STRUCTURE, BUSINESS AND INDUSTRY OF GRADEK ENERGY

A) *Corporate Structure*

3. GEI is a privately held company and was formed on May 15, 2001 under the *Canada Business Corporations Act*, the whole as appears from a relevant extract of the CIDREQ filed herewith as Exhibit R-1.
4. As of today, GEI has 6,800,000 common shares issued and outstanding, 6,596,000 of which are held by RHST.
5. GEC is a privately held company and was formed on June 13, 2007 under the *Canada Business Corporations Act*, the whole as appears from a relevant extract of the CIDREQ filed herewith as Exhibit R-2.
6. As of today, GEC has 10,000,000 common shares issued and outstanding, 8,946,500 of which are held by GEI.
7. The Mis en cause RHST is a privately held company and was formed on December 2, 1993 under the *Canada Business Corporation Act*, the whole as appears from a relevant extract of the CIDREQ filed herewith as Exhibit R-3.
8. The Mis en cause Thomas Gradek, the founder and President and Chief Executive Officer of Gradek Energy, is currently the sole beneficial shareholder of RHST.
9. While GEI and GEC are distinct legal entities, from an operational standpoint they are run largely as a single unit, and management and operational decisions are made at Gradek Energy's headquarters in Montréal, Quebec.
10. RHST is a holding company which own all of the intellectual property currently being licensed to GEI and does not conduct any operations relating to the Gradek Energy business.
11. In summary, as of today, the organizational structure of the Gradek Energy group is as follows:



B) Overview of Business and Operations

12. Gradek Energy's business is the development, marketing and sale of a bi-polymer bead called the Re-usable Hydrocarbon Sorbent ("RHS").
13. The primary commercial application of the RHS technology is the recovery of hydrocarbons upon direct physical contact of the beads with any aqueous or solid mixtures containing hydrocarbons.
14. GEI has developed market applications for the RHS technology in Canadian oil sands tailings remediation, oil waste recovery, produced water treatment filtration and oil spill cleanup technology.
15. RHST, as mentioned above, holds the intellectual property rights related to the RHS technology and other similar technologies used by Gradek Energy.
16. GEI has an exclusive license from RHST to develop, manufacture, produce, sell, distribute and commercialize the RHS technology (the "**RHST Licensing Agreement**").

17. GEI is the operating company of Gradek Energy and is responsible for the research, development, production, marketing and sales activities related to the various commercial applications of the RHS technology.
18. GEI currently leases a commercial/industrial space located at 162, Brunswick boulevard in Montréal, Québec from Labrosse Developments Inc., where its administrative headquarters, its research and development and RHS manufacturing facilities are located.
19. The commercial lease for the Brunswick boulevard premises (the "**Brunswick Lease**") was renewed on April 30, 2013 for a period of two years with a three-year renewal option.
20. On May 17, 2012, GEI entered into a sub-lease agreement with Chimie Parachem S.E.C for the premises located at 3500, Broadway avenue in Montréal-Est, Quebec (the "**Broadway Lease**").
21. In August 2012, in collaboration with Syncrude Canada ("**Syncrude**"), one of Canada's largest oil sands operators, GEI commissioned a pilot plant (the "**Pilot Plant**") to test the proprietary bitumen recovery process using RHS technology on the premises of the Broadway Lease.
22. Throughout 2013, GEI conducted a validation campaign at the Pilot Plant to test the RHS technology outside of a laboratory context.
23. On January 31, 2014, Hatch Ltd. ("**Hatch**"), an independent engineering company, issued an extremely positive process performance report on the effectiveness of the RHS technology in extracting hydrocarbons and improving tailing solids and water quality, which validated the RHS technology in connection with the extraction of bitumen and fines from a reconstituted oil sand tailing stream.
24. Starting in February 2014, GEI has conducted or is conducting seven testing programs involving other commercial applications of the RHS technology addressing the specific needs of major potential clients operating in the areas of oil production, water treatment and oil waste service provision.
25. Two of the completed testing programs have yielded positive results and the clients concerned wish to conduct another series of test. With adequate funding, these testing programs, which aim at assessing the commercial viability of the RHS technology for these clients, could be completed before the end of 2014. The successful completion of these testing programs could allow Gradek Energy to enter into commercial arrangements which would greatly facilitate GEI's ability to submit to its creditors an acceptable plan of arrangement and to obtain financing on a going forward basis.
26. GEI also currently leases an office space located at 144, 4th Avenue SW in Calgary, Alberta which is located in the vicinity of most of Gradek Energy's

major clients and serves Gradek Energy's continuing business development efforts.

27. GEC is the corporate entity expected to become the oil sands waste tailings stream management service provider, focusing exclusively on the use of the RHS technology in treating tailings from the Alberta oil sands.
28. GEC holds a license from GEI to distribute, sell and commercialize the RHS technology in Canada (the "**GEI Licensing Agreement**").
29. Currently, Gradek Energy has four employees located in its facilities in Montréal and Calgary, down from 21 in 2012 when the company was at its peak.
30. Should Gradek Energy be granted the protection of the CCAA, it intends to hire back three of its laid-off employees as part of the resumption of its testing programs to be conducted during the restructuring process.

III. FINANCIAL SITUATION AND PERFORMANCE

A) *Assets and Liabilities*

i. Consolidated and Non-Consolidated Financial Statements

31. The RHS technology is still in the development stage and GEI has incurred, since its inception, significant negative cash flows and working capital and a significant deficit. As such, the ability for GEI to continue its operations has consistently depended upon the successful completion of financing arrangements.
32. The financial statements referred to hereinbelow have been prepared on the basis of accounting principles applicable to a going concern.
33. Attached hereto as Exhibit **R-4** filed under seal is a copy of the most recent audited financial statements of GEI on a non-consolidated basis as at December 31, 2013 (the "**2013 Non-consolidated Financial Statements**").
34. According to the 2013 Non-consolidated Financial Statements (R-4), GEI owned assets with a book value of \$6,982,319 and had total liabilities of \$8,941,289 as at December 31, 2013.
35. Attached hereto as Exhibit **R-5** filed under seal is a copy of the unaudited financial statements of GEI on a non-consolidated basis for the three and six month periods ended on June 30, 2014 (the "**June 2014 Non-audited Non-consolidated Financial Statements**").

36. According to the June 2014 Non-audited Non-consolidated Financial Statements (R-5), GEI owned assets with a book value of \$5,897,148 and had total liabilities of \$10,899,630 as at June 30, 2014.
37. As also appears from the June 2014 Non-audited Non-consolidated Financial Statement, GEI is expecting to receive shortly \$1,249,231 in Investment tax credits and sales taxes return (the "**2013 Tax Credits**").
38. Attached hereto as Exhibit **R-6** filed under seal is a copy of the most recent unaudited financial statements of GEC on a non-consolidated basis as at December 31, 2012 (the "**2012 GEC Non-audited Non-consolidated Financial Statements**").
39. According to the 2012 GEC Non-audited Non-consolidated Financial Statements, GEC owned assets with a book value of \$200,000 and had total liabilities of \$119,595 as at December 31, 2012.

ii. Secured Creditors:

(a) Dundee Corporation ("**Dundee**")

40. Dundee Corporation ("**Dundee**") holds a first \$7.5 million consolidated, amended and restated convertible secured debenture issued on November 25, 2011 as amended May 14, 2012 and June 13, 2013 (the "**2011 Debenture**") and a second \$1.5 million convertible secured debenture issued on May 14, 2012 (the "**2012 Debenture**", with the 2011 Debenture, the "**Debentures**"). Both Debentures mature on April 30, 2018 (the "**Maturity Date**") as appears from the 2011 Debenture filed as Exhibit **R-7**, and the 2012 Debenture filed as Exhibit **R-8**.
41. The total amount owed by Gradek Energy to Dundee as of October 7, 2014 is \$9,917,005.
42. The Debentures are secured by:
 - a) a movable hypothec on all of GEI and GEC's present and future movable property;
 - b) a hypothec with delivery granted by GEI in favor of Dundee on all the issued and outstanding shares that GEI holds in the capital of GEC; and
 - c) a limited recourse guarantee by Thomas Gradek of the obligations of GEI and GEC under the Debentures. The obligations of Thomas Gradek are guaranteed by a hypothec with delivery granted by Thomas Gradek in favor of Dundee on all the issued and outstanding shares that Thomas Gradek holds in the share capital of RHST (subject to RHST remaining the owner of the RHS technology and the RHS technology remaining free and clear of encumbrances);

43. RHST has also granted Dundee a conditional perpetual and exclusive license (i) to use, develop, manufacture, produce, sell, distribute and commercialize the process and the know-how in the world and (ii) to use, manufacture, produce, sell, distribute and commercialize the RHS technology in the world. The license granted by RHST to Dundee is only effective in the event the RHST Licensing Agreement is terminated and any amount owing under the Debentures are outstanding.

(b) Investissement Québec ("IQ")

44. IQ provided GEI with two loans in the amount of \$1,000,000 and \$900,000 respectively, (the "IQ Loans") and holds a first ranking hypothec on the 2013 Tax Credits.

(c) Landlords

45. Labrosse Developments Inc. is owed \$77,524 by GEI, as no payments have been made on the Brunswick Lease since July 2014, and holds an hypothec on all of GEI's present and future moveable property in the amount of \$100,000.

(d) National Bank of Canada

46. As of October 7, 2014, National Bank of Canada is owed \$72,961 in overdraft by GEI and holds an hypothec on all of GEI's present and future account receivables in the amount of \$480,000 plus interest at a yearly rate of 25%.

iii. Source Deductions and Employer Contributions

47. Revenu Québec is owed \$115,840.45 in source deductions and employer contributions.

iv. Trade Creditors and Suppliers

48. Gradek Energy's trade accounts payable totalled approximately \$1,233,743 as at October 7, 2014.

49. Gradek Energy is also indebted to some of its key stakeholders, namely:

- a) its employees, for various payroll accruals amounting to \$15,620;
- b) its management, for various payroll accruals amounting to \$493,320;
- c) Robert Andrews, Senior VP & Chief Business Development Officer for an amount of \$168,431;
- d) RHST, for an amount of \$1,069,125;

B) Recent Financial Difficulties

50. On September 15, 2010, Gradek Energy, RHST and Thomas Gradek entered into a comprehensive agreement with Dundee (the "**Master Agreement**") in connection with Dundee's initial investment in Gradek Energy. Dundee was then and is now Gradek Energy's most significant financial partner.
51. The Master Agreement, filed herein as Exhibit **R-9**, provides for:
- The funding of the development of the RHS technology;
 - The negotiation and conclusion in good faith by Dundee, Gradek Energy and Gradek Energy's other shareholders of a unanimous shareholders agreement (the "**USA**") containing standard provisions; and
 - Dundee's veto rights on any new financing of Gradek Energy (the "**Veto Rights**");
52. Despite attempts by Gradek Energy to negotiate the USA with Dundee since 2010, to this day, no USA has been agreed with Dundee, which, together with the Veto Rights, have precluded Gradek Energy from successfully raising third party funding to sustain its activities.
53. In 2012, with the funds provided by Dundee pursuant to the Debentures, Gradek Energy began the commissioning of the Pilot Plant in order to validate the RHS technology.
54. Unfortunately, in the summer of 2012, Gradek Energy suffered set-backs in the commissioning of the Pilot Plant and realized that it would require additional funding to complete the validation of the RHS technology.
55. In the fall of 2012, although Dundee recognized that Gradek Energy required additional funding to complete the development of the RHS technology, to finalize the validation campaign of the Pilot Plant and to commercialize the RHS technology:
- Dundee refused to extend any additional funding; and
 - Dundee refused to negotiate the terms of a USA which would have enabled Gradek Energy to attempt to raise third party funding;
- until the completion of the validation process of the Pilot Plant.
56. Dundee's hardline position prevented any validation campaign from being conducted by Gradek Energy for the remainder of 2012, thus significantly delaying Gradek Energy's development process.

57. In November 2012, in an effort to address Dundee's concerns in respect of the Pilot Plant performance and of the lack of external funding, Gradek Energy hired Tony Fionda, previously from National Bank Financial ("NBF"), as its Senior VP & Chief Financial Officer, with a view to obtaining third party funding and provide appropriate financial governance, and hired Robert Andrews, previously an executive with energy companies in Alberta, as its Senior VP & Chief Business Development Officer, in an effort to develop stronger business relationships with potential clients in the Calgary market.
58. In the fall of 2012, Gradek Energy also hired NBF to attempt to raise new third party funding on a projected timeline that would have provided for a closing in the spring of 2013.
59. Although expressions of interest from third party investors were initially sought in connection with the attempted spring 2013 funding, on April 30, 2013 Dundee refused to allow Gradek Energy to proceed on the basis that the process performance report from Hatch should be obtained prior to raising funds from new third party investors.
60. It became clear in connection with the attempted spring 2013 funding that a USA would need to be entered into between Dundee and Gradek Energy in order for a new third party financing to succeed. Dundee confirmed that it would work closely with NBF and Gradek to finalize the USA and complete the financing under a new timeline which contemplated closing in connection with the delivery of the process performance report from Hatch, which at that time was anticipated to be in June 2013.
61. In April 2013, Robert Andrews, Senior VP & Chief Business Development Officer at GEI, invested \$150,000 in Gradek Energy. The investment has not been formally approved by Dundee, though Dundee was informed that Robert Andrews has funded GEI.
62. In May 2013, Gradek Energy attempted to obtain bridge financing from Dundee to complete the Pilot Plant validation campaign but failed to secure same, largely because of the very onerous conditions sought by Dundee for such bridge financing, which Gradek Energy considered to be unacceptable. At that time, Gradek Energy also attempted to engage Dundee on the terms of the USA to be used in connection with the proposed June 2013 third party financing, but was not successful.
63. Notwithstanding the fact that the gridlock between Dundee and Gradek Energy had put Gradek Energy in jeopardy by effectively preventing it from securing any additional debt or equity funding, in the summer of 2013, Gradek Energy:
 - secured bridge financing from NBF using its 2013 R&D Tax Credits;
 - and

- attempted to finalize the USA with Dundee, but were not successful.
64. In the summer of 2013, Nathan Ashcroft was hired as Senior VP Chief Engineer to speed up the Pilot Plant validation campaign. The initial process performance report from Hatch was ultimately delivered in September 2013, but additional validation was required and a second report was mandated to be prepared.
 65. In December 2013, expecting to soon complete the Pilot Plant validation campaign and obtain the final process performance report from Hatch, Gradek Energy asked Dundee, once again, to be provided with bridge financing in the amount of \$1,250,000 in order to support its activities until third party funding could be obtained.
 66. Gradek Energy, at the time, had no other way to obtain bridge financing because Dundee had indicated that it would exercise its Veto Rights against any third party funding initiative until such time that the second Hatch report would be released.
 67. On December 10, 2013, Dundee indicated to Gradek Energy that it would not invest any additional funds in Gradek Energy until certain conditions in addition to the delivery of the second process performance report from Hatch were met, namely (i) the Gradek family personally investing additional funds into Gradek Energy, (ii) the contracts of every member of the management team being reviewed and agreed to by Dundee and (iii) changes in the management structure of Gradek Energy.
 68. With no other source of funding available, Gradek Energy then used its 2013 R&D tax credit receipt to fund the operations required to complete and obtain the second process performance report from Hatch.
 69. On February 2, 2014, the second Hatch report was completed and was provided to Dundee. The second Hatch report validated the RHS technology in connection with the extraction of bitumen and fines from a reconstituted oil sand tailing stream.
 70. Dundee was invited to discuss the results of the second Hatch report with Gradek Energy but failed to follow through. Dundee has, however, not indicated that it disagrees with the conclusions of the report.
 71. In February 2014, Gradek Energy and NBF started preparing for a second attempt to raise badly needed third party funding with the intent of revisiting potential investors who had manifested interest in the attempted spring 2013 funding.
 72. In February 2014, the Gradek family put in place a term loan from NBF, which was used to fund RHST with \$1,050,000 which was then loaned by RHST to GEI. The loan documentation has not been finalized with Gradek Energy or

approved by Dundee, though Dundee was informed that the Gradek family has funded GEI through RHST.

73. In March 2014, it became evident that potential investors approached in connection with the third party funding led by NBF were generally reluctant to invest in Gradek Energy because of its uncertain capital structure (including Dundee's role in that structure and the absence of a USA binding Dundee) and the need for an advancement in a commercial commitment from a future client.
74. The \$1,050,000 provided to GEI by the Gradek family were used by Gradek Energy from February 2014 to July 2014 primarily to conduct seven testing programs involving commercial applications of the RHS technology addressing the specific needs of major potential clients operating in the areas of oil production, water treatment and oil waste service provision with the objective of obtaining a commercial commitment to the RHS Technology.
75. As mentioned previously, two of the completed testing programs have yielded positive results and the clients concerned wish to conduct another series of test.
76. With adequate funding, these testing programs, which are tailored to the specific needs of said clients, could be completed before the end of 2014. The successful completion of these testing programs could then allow Gradek Energy to enter into commercial arrangements which would, in turn, greatly facilitate Gradek Energy's ability to submit an acceptable plan of arrangement to its creditors.
77. In July 2014, Gradek Energy engaged with Dundee to attempt to resolve the issues raised by Dundee as impediments to additional investment in Gradek Energy by Dundee. In connection with a potential bridge financing in the amount of \$500,000, Gradek Energy and Dundee agreed in principle to a number of changes, including changes to Gradek Energy's management and on near term client targets that would accelerate revenue generation while minimizing Gradek Energy's capital expenditures. Gradek Energy also agreed to allow Dundee to review the contracts of every member of the Gradek Energy management team.
78. On August 18, 2014, Dundee delivered a term sheet for the \$500,000 bridge financing which was signed by Gradek Energy. When Gradek Energy prepared draft documents for the financing, Dundee indicated that it would not proceed with the bridge financing on the basis set out in the term sheet.
79. Following this event, there were a number of verbal discussions between Dundee and Gradek Energy with respect to the terms of a bridge financing.
80. In September 2014, Gradek Energy was able to obtain a conditional commitment from a new third party investor to participate in the proposed

bridge financing with Dundee. Ultimately, this investment would also have required that Dundee enter into a USA and it became apparent over time that the amount of the bridge loan necessary to bring Gradek Energy to the closing of new third party financing would be significantly in excess of \$500,000. On two occasions transaction terms were agreed to, in principle, between Gradek Energy and Dundee, but Gradek Energy understands that these transaction terms were not approved by Dundee's investment committee.

81. Gradek Energy also understands that, pursuant to an audit by Dundee's consultant in September 2014, Dundee estimates that any effective bridge financing provided to Gradek Energy would need to be approximately \$1,500,000.
82. Beginning in April 2014 and throughout the summer of 2014, Gradek Energy's management team agreed to receive only 12.5% of its salary. No salary has been paid to the management team since the end of August 2014.
83. While Gradek Energy's management team remains committed to engage in business development activities to obtain commercial validation for specific new client targets, as required to raise new third party funding, it is clear that Dundee's refusal to either enter into a USA containing standard terms or provide any funding to Gradek Energy prevent it from commercializing the RHS technology and threaten its very existence.

C) The Insurer's Abusive Decision Not to Renew Gradek Energy's General Coverage Policy

84. GEI and GEC hold insurance policies bearing the numbers SOV79154447 and SOV79154448 (the "Insurance Policies") with The Sovereign General Insurance Company ("Sovereign").
85. The Insurance Policies were due to expire in August 2014 but a two months extension of coverage was granted at the time to Gradek Energy, under the same conditions provided for by the Insurance Policies, so as to allow Gradek Energy to finalize a term sheet providing for bridge financing.
86. In September 2014, Gradek Energy informed Sovereign via its insurance broker, Paige Cheasley from GPL assurance inc., that it expected a term sheet would be finalized by October 3, 2014. Sovereign agreed to wait until October 8, 2014, before making a decision in respect of the renewal of the Insurance Policies.
87. On October 7, 2014, Sovereign was informed via Mrs. Cheasley that additional delays had been incurred in the conclusion of the term sheet and agreed to extend coverage and to postpone its decision with regard to the renewal until the date of the expected closing, namely October 10, 2014.

88. On this occasion, Sovereign requested via Mrs. Cheasley to be provided with confirmation that Gradek Energy had obtained the necessary financing before agreeing to renew the Insurance Policies for a period of six months.
89. Sovereign provided no indication as to the form or substance of the confirmation sought.
90. On October 10, 2014, Robert Andrews addressed a letter to Sovereign confirming that the financing of \$700,000 secured by Gradek Energy was sufficient for Gradek Energy to achieve its next financing milestone. Mr. Andrews further offered Sovereign to immediately pay, out of his own pockets, the outstanding payable of \$7,460 plus applicable taxes, and to continue paying the premium applicable for the next six months.
91. On October 14, 2014, Sovereign confirmed through Mrs. Cheasley, at 1:49 pm, that it was reviewing the document forwarded by Mr. Andrews to assess whether it was sufficient for its purpose.
92. The same day, at 4:26 pm, Mrs. Cheasley informed Gradek Energy, on behalf of Sovereign, that the latter did not consider the letter sent by Mr. Andrews on October 10 as sufficient confirmation that the financing had been obtained, and that the Insurance Policies would expire that same night.
93. In the current circumstances, which are known to Sovereign, the decision not to renew the Insurance Policies without giving Gradek Energy sufficient notice to secure coverage with another insurer is abusive and highly prejudicial to Gradek Energy.
94. In fact, Sovereign's decision prevents Gradek Energy from benefiting from the funding as provided for by the DIP Term Sheet contemplated by this motion and puts the whole restructuring process in jeopardy.
95. Gradek Energy therefore requests an order from this Court to the effect that Sovereign' notice not to renew the Insurance Policies is void and that the Insurance Policies remain in full force and effect until such time as this Court may order otherwise.

IV. RESTRUCTURING PLAN

A) Steps in Restructuring Process

96. As described in Gradek Energy's action plan communicated herewith as Exhibit R-10, should the Order sought be granted, Gradek Energy will :
 - a) complete the development of the RHS technology and bring it to market;
 - b) take active steps to identify and attract new investors; and

c) submit an acceptable plan of arrangement to its creditors.

B) Financing During CCAA Proceedings

97. GEI has conducted a cash flow analysis assuming the relief sought is granted to determine the amounts required to finance GEI's operations until February 2015. The cash flow projections for GEI, for the upcoming 13 weeks period, is filed herewith under seal with the Court only as Exhibit **R-11**.
98. The Gradek Energy management team has agreed to defer 30% of its remuneration during any Stay Period to be provided by the Court to Gradek Energy.
99. As shown from the cash flow projections (R-11), GEI estimates that it will require approximately \$500,000 of funding during the initial period of 30 days.
100. GEI aims at supporting its cash flow in the upcoming months by raising additional funding through debtor-in-possession financing ("**DIP Financing**") which would, with leave of the Court, rank in priority against the assets of Gradek Energy of any secured creditor or statutory charge.
101. Alfred Sorensen, Robert Andrews and Thom Dawson (the "**DIP Lenders**") have agreed to provide a portion of Gradek Energy's required funding (the "**DIP Financing**") pursuant to a Term Sheet, a copy of which is attached herewith as Exhibit **R-12** (the "**DIP Term Sheet**"). Among other things, the DIP Term Sheet provides that such funding is conditional upon the DIP Lenders being granted security over all Gradek Energy's assets, ranking first in priority before any secured creditor or statutory charge (the "**DIP Charge**").
102. Gradek Energy believes that it will be able to secure additional financing to fund its operations during its restructuring provided that such additional funding could be secured by a court-ordered first ranking security over all of Gradek Energy's assets (the "**Additional DIP Financing**").
103. The Petitioners will be unable to continue their operations and to initiate a restructuring process without access to the additional working capital for GEI provided by way of the DIP Financing and the Additional DIP Financing.
104. The DIP Financing will help retaining the confidence of the employees, customers, suppliers and creditors of Gradek Energy.
105. Notwithstanding the potential effect of the DIP Financing on existing security granted by the Petitioners, the DIP Financing is necessary to permit funding of Gradek Energy during the proposed CCAA proceedings and, accordingly, for the reasons set forth in paragraphs 50 to 83, is in the best interests of all of the stakeholders of Gradek Energy.

106. If this Court grant the relief sought with respect to the DIP Financing, there would be no material prejudice to the position of the existing creditors of GEI compared to the consequences should GEI cease to operate.

C) *Reliefs Sought*

i. General

107. In light of the foregoing, the Petitioners seek relief under the CCAA, as set out in the conclusions of the Petitioners' motion, for the following reasons:

- a) the Petitioners are in serious jeopardy in that they cannot continue to operate without protection from their creditors;
- b) the Petitioners are insolvent in that they are unable to meet their obligations as they generally become due;
- c) in the circumstances, CCAA restructuring proceedings are the most appropriate and beneficial form of insolvency proceedings for the Petitioners as a bankruptcy or receivership of the Petitioners would have devastating consequences for all stakeholders, including employees, trade creditors and customers; and
- d) the business of the Petitioners is viable, provided that their current liquidity issues can be immediately addressed, and if the plan they intend to propose is accepted by their creditors, they will achieve a far greater benefit not just for their creditors, but for their employees and other stakeholders than would be available under any other available alternative.

ii. Extension of the Stay to Thomas Gradek as Guarantor of GEI's Obligations

108. The Petitioners believe that the stay of proceedings to be issued by this Court should extend to the obligations of Thomas Gradek as guarantor of GEI's obligations, should the protection of the CCAA be granted to Gradek Energy.

109. By virtue of section 15 of the Debentures (R-7 & R-8), Thomas Gradek, who holds 100% of the shares of RHST, has pledged and hypothecated all of said shares in guarantee of GEI's obligations under the Debentures.

110. As mentioned previously, RHST holds the intellectual property rights in respect of the RHS technology,

111. The extension of the stay of proceedings to such recourses in guarantee which may be exercised against Thomas Gradek under the Debentures is required as their exercise would jeopardize the restructuring efforts of the Petitioners.

112. Considering the lack of collaboration displayed by Dundee in the past towards the Petitioners, as well as the difficulties for Gradek Energy to obtain financing in the absence of a USA, Gradek Energy's ability to attract third party investors and to secure financing on the market would be further reduced if RHST were to fall under Dundee's control.

113. Dundee gaining control of RHST would also pose significant risks to the restructuring process in that Dundee could seek to terminate the licensing agreement between RHST and GEI in order for the licensing rights to revert back to it.

iii. Administrative Charges to Facilitate the Retention of Financial and Legal Advisors

114. In order to successfully restructure its business, Gradek Energy will require the assistance of legal and financial advisors. Given the current financial condition of Gradek Energy, it is unlikely that any such advisors would agree to assist Gradek Energy through this period of uncertainty without the benefit of court-ordered charges against the assets of Gradek Energy.

115. Petitioners are therefore seeking approval of a court-ordered administrative charge (the "**Administrative Charge**") on all the assets of Gradek Energy in the maximum amount of \$300,000 to secure payment of the fees and disbursements of : (i) the Proposed Monitor; (ii) the Proposed Monitor's counsel; and (iii) Gradek Energy's counsel.

116. Gradek Energy is seeking the Administrative Charge to secure the fees and disbursements incurred in connection with services rendered to Gradek Energy both before and after the commencement of the proposed CCAA proceedings.

117. The size of the to be proposed Administrative Charge will be sufficient to fully secure any unpaid fees and disbursements which may be incurred by the insolvency professionals during the CCAA proceedings.

118. The amount of the Administrative Charge is reasonable and appropriate in view of the complexity of the CCAA proceedings and the services to be provided by the beneficiaries of the Administrative Charge.

119. The proposed Initial Order provides that the Administrative Charge will rank ahead in priority to the secured creditors and to the statutory charges.

iv. Confidentiality

120. Gradek Energy being a privately owned corporation, it is under no obligation to disclose its cash flow statements and its financial statements to the public.

121. It would be detrimental to Gradek Energy to share the information with the general public, notably its competitors.
122. Thus, it is in the interest of Gradek Energy that an order declaring that all cash flow and financial statements produced and/or communicated in the context of the proposed CCAA proceedings shall be kept confidential and be filed under seal.

D) *The Monitor*

123. Samson Bélair/Deloitte & Touche Inc. has agreed to act as monitor to the Petitioners under the CCAA, subject to the court's approval, and to the granting of relief by the court pursuant to the present proceedings.
124. In light of all of the above, the circumstances are such that a CCAA order should be rendered as per the conclusions of the Motion.

WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the Petition.
2. **ISSUE** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - Service
 - Application of the CCAA
 - Effective Time
 - Plan of Arrangement
 - Stay of Proceedings against the Petitioners and the Property
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies;
 - No Interference with Rights
 - Continuation of Services
 - Non-Derogation of Rights
 - Interim Financing (DIP)
 - Directors' and Officers' Indemnification and Charge

- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Service

3. **DECLARE** that sufficient prior notice of the presentation of this Petition has been given by the Petitioners to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

Application of the CCAA

4. **DECLARE** that the Petitioners are debtor companies to which the CCAA applies.

Effective time

5. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "**Effective Time**").

Plan of Arrangement

6. **DECLARE** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Petitioners and the Property

7. **ORDER** that, until and including November 13, 2014, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioners or the Mis en cause, or affecting the Petitioners' or the Mis en cause's business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 10 hereinbelow except with leave of this Court. Any and all

Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

Stay of Proceedings against the Directors and Officers

8. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

9. **ORDER** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order.

No Exercise of Rights or Remedies

10. **ORDER** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Mis en cause, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

10.1 **ORDER** that during the Stay Period, the decision made by The Sovereign General Insurance Company not to renew the insurance policies bearing the policy numbers SOV79154447 and SOV7915444, and communicated to Petitioners on October 14, 2014, is suspended by this Order, until such time as this Court may render a decision as to the validity of the notice of non-renewal of said insurance policies

10.2 **ORDER** that during the Stay Period, The Sovereign General Insurance Company may not cease to provide coverage under the insurance policies bearing the policy numbers SOV79154447 and SOV7915444 and must abide by all the terms and conditions attached thereto, until such time as this Court may render a decision as to the validity of the notice non-renewal of said insurance policies.

11. **DECLARE** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

12. **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or

held by the Petitioners, except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

Continuation of Services

13. **ORDER** that during the Stay Period and subject to paragraph 15 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, 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 Petitioners, and that the Petitioners shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, with the consent of the Monitor, or as may be ordered by this Court.

14. **ORDER** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioners.

15. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Interim Financing (DIP)

16. **ORDER** that Petitioners be and are hereby authorized to borrow, repay and reborrow from Alfred Sorensen, Robert Andrews and Thom Dawson (the "**Interim Lenders**") such amounts from time to time as Petitioners may consider necessary or desirable, up to a maximum principal amount of \$700,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet attached hereto as Exhibit R-12 (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");
17. **ORDER** that Petitioners are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lenders in connection with the Interim Facility and the Interim Financing Term Sheet, and Petitioners are hereby authorized to perform all of its obligations under the Interim Financing Documents;

18. **ORDER** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lenders Expenses**”)) under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lenders pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and the Order;
19. **DECLARE** that all of the Property of Petitioners and is hereby subject to a charge and security for an aggregate amount of \$900,000 (such charge and security is referred to herein as the “**Interim Lenders Charge**”) in favour of the Interim Lenders as security for all obligations of Petitioners to the Interim Lenders with respect to all amounts owing (including principal, interest and the Interim Lenders Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lenders Charge shall have the priority established by paragraphs 36 and 37 of this Order;
20. **ORDER** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;
21. **ORDER** that the Interim Lenders may:
 - (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lenders Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Petitioners if the Petitioners fail to meet the provisions

of the Interim Financing Term Sheet and the Interim Financing Documents;

22. **ORDER** that the Interim Lenders shall not take any enforcement steps under the Interim Financing Documents or the Interim Lenders Charge without providing at least 5 business days written notice (the "**Notice Period**") of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lenders Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA;
23. **ORDER** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 16 to 22 hereof unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lenders apply for or consents to such order;

Restructuring

24. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right, subject to approval of the Monitor or further order of the Court, to:
- (a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3

and 36 CCAA;

- (c) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioners may determine;
- (d) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioners and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- (e) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

25. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioners pursuant to section 32 of the CCAA and subsection 27(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioners and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

26. **ORDER** that the Petitioners shall provide to any relevant landlord notice of the Petitioners' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioners have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioners and the landlord.

27. **DECLARE** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

28. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

Powers of the Monitor

29. **ORDER** that Samson Bélair/Deloitte & Touche Inc. is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in La Presse and The Gazette and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective 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;
- (b) shall monitor the Petitioners' receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the

Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in its negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (k) may act as a "foreign representative" of the Petitioners or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (l) may give any consent or approval as may be contemplated by the

Order or the CCAA; and

- (m) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- 30. **ORDER** that the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- 31. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- 32. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- 33. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying

out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 33(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

34. **ORDER** that Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
35. **DECLARE** that the Monitor, the Monitor's legal counsel, if any, the Petitioners' legal counsel and the Monitor and the Petitioners' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$300,000 (the "**Administrative Charge**"), having the priority established by paragraphs 36 and 37 hereof.

Priorities and General Provisions Relating to CCAA Charges

36. **DECLARE** that the priorities of the Administration Charge and the Interim Lenders Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
 - (a) first, the Administrative Charge; and
 - (b) second, the Interim Lenders Charge.

37. **DECLARE** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, deemed trusts, priorities, charges, encumbrances or security of whatever nature or kind and statutory charge (collectively, the “**Encumbrances**”) affecting the Property charged by such Encumbrances.
38. **ORDER** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or pari passu with, any of the CCAA Charges unless the Petitioners obtain the prior written consent of the Monitor and the prior approval of the Court.
39. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
40. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioners (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioners of any Third Party

Agreement to which it is a party; and

- (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

- 41. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioners pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- 42. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes.

General

- 46. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the directors, employees, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioners' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

47. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
48. **ORDER** that the all of Petitioners' financial statements and cash flow statements produced and/or communicated in the context of these CCAA proceedings, including Exhibits R-4, R-5, R-6 and R-11 be kept confidential and under seal with the Court until, as the case may be, further order of this Court or written agreement from the Petitioners and the Monitor. However, all creditors of the Petitioners shall be entitled to obtain disclosure of said Exhibits upon written request and provided they have signed a confidentiality agreement in standard form.
49. **DECLARE** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
50. **DECLARE** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioners shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
51. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on

any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the Monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;

52. **DECLARE** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

53. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioners, the Monitor 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. Notice to the Petitioners and the Monitor should be given to:

- Alain N. Tardif and Nicolas Deslandres
McCarthy Tétrault LLP
Suite 2500, 1000 de la Gauchetière St. W
Montréal (QUEBEC) H3B 0A2
- Jean-François Nadon
Samson Bélair/Deloitte & Touche Inc.
Suite 3000, 1 Place Ville-Marie
Montréal (QUEBEC) H3B 2B6


54. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

55. **DECLARE** that the Monitor, with the prior consent of the Petitioners, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement

the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

56. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
57. **ORDER** the provisional execution of the Order notwithstanding any appeal.

MONTREAL, October 14, 2014



McCARTHY TÉTRAULT LLP

Attorneys for the Petitioners, Gradek Energy Inc. and Gradek Energy Canada Inc.

Copie conforme / True Copy


McCarthy Tétrault S.E.N.C.R.L., s.r.l., LLP

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
COMMERCIAL DIVISION

N°: 500-11-

IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF :

GRADEK ENERGY INC.

and

GRADEK ENERGY CANADA INC.

Petitioners

and

R H S T DEVELOPMENT INC.

and

THOMAS GRADEK

Mis en cause

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

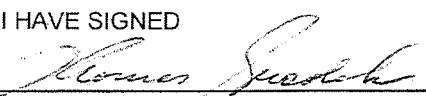
Monitor

AFFIDAVIT

I, the undersigned, THOMAS GRADEK, having a place of business at 162 blvd. Brunswick, Pointe-Claire, Québec, H9R 5P9, solemnly declare the following:

1. I am the President and Chief Executive Officer of Gradek Energy;
2. All the facts alleged in the motion for an initial order under section 11 of the *Companies' Creditors Arrangement Act* are true.

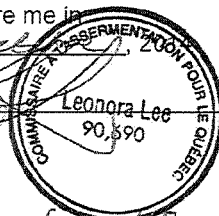
AND I HAVE SIGNED



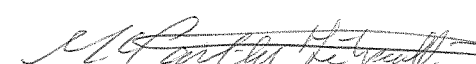
THOMAS GRADEK

Solemnly Declared before me in
Montreal, on this 15th Oct 2009

Commissioner of oaths
DOCS 13859863



Copie conforme / True Copy



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Agence du revenu du Canada
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Ministère du revenu du Québec
Direction régionale du recouvrement
Sector R23CPF – 3rd floor
1600 Rene-Lévesque Blvd. W.
Montréal (QUEBEC) H3H 2V2

Sovereign General Insurance Company
Attn: Nouara Lanasri
Suite 1750, 2001 McGill College Avenue
Montréal (QUEBEC) H3A 1G1

Take notice that the present Motion for an initial order under section 11 of the *Companies' Creditors Arrangement Act* will be presented before a judge of the Superior Court, sitting in bankruptcy and insolvency matters at the Montreal courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, in **room 16.12 on October 15, 2014, at 9:30 a.m.** or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 14, 2014



McCARTHY TÉTRAULT LLP

Attorneys for the Petitioners, Gradek Energy Inc.
and Gradek Energy Canada Inc.

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McCarthy Tétrault S.E.N.C.R.L., s.r.l., LLP

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
COMMERCIAL DIVISION

N°: 500-11-

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

GRADEK ENERGY INC.

and

GRADEK ENERGY CANADA INC.

Petitioners

and

R H S T DEVELOPMENT INC.

and

THOMAS GRADEK

Mis en cause

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**LIST OF EXHIBITS
(Motion For An Initial Order under Section 11 of the CCAA)**

- R-1: GEI, extract of the CIDREQ;
- R-2: GEC, extract of the CIDREQ;
- R-3: RHST, extract of the CIDREQ;
- R-4: GEI, 2013 Non-consolidated Financial Statements;
- R-5: GEI, June 2014 Non-audited Non-consolidated Financial Statements;
- R-6: GEC, 2012 Non-audited Non-consolidated Financial Statements;

- R-7: 2011 Debenture and Addendum;
- R-8: 2012 Debenture;
- R-9: Master Agreement and Addendum;
- R-10: Action Plan (Restructuring);
- R-11: Cash Flow Analysis and Projection;
- R-12: DIP Term Sheet.

MONTREAL, October 14, 2014

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

Attorneys for the Petitioners, Gradek Energy Inc.
and Gradek Energy Canada Inc.

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McCarthy Tétrault

McCarthy Tétrault S.E.N.C.R.L., s.r.l., LLP

N° 500-11-

SUPERIOR COURT – COMMERCIAL
DIVISION
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:

GRADEK ENERGY INC. & GRADEK ENERGY
CANADA INC.

Petitioners

R H S T DEVELOPMENT INC. & THOMAS
GRADEK

Mis en

cause

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**AMENDED MOTION FOR AN
INITIAL ORDER UNDER
SECTION 11 OF THE CCAA**

COPY

**Me Alain N. Tardif
Tel: (514) 397-4274
Our file: 211821-446837**

BC 0847

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