



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

Court File No. 35-2041153

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MUSTANG GP LTD.**

Court File No. 35-2041155

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

Court File No. 35-2041157

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST POWER MUSTANG GENERATION LTD.**

THE HONOURABLE

)

Mon DAY, THE *19th* DAY

)

JUSTICE

RADY

)

OF OCTOBER 2015

ORDER

THIS MOTION, made by Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd. (collectively, the "**Debtors**") for an Order, *inter alia*:

1. abridging the time for service of the Debtor's Notice of Motion so that the motion is properly returnable on October 19, 2015;
2. administratively consolidating the Debtors' proposal proceedings under the BIA;
3. authorizing the Debtors to enter into an Interim Financing Term Sheet (the "**DIP Term Sheet**") with StormFisher Environmental Ltd. (in this capacity, the "**DIP Lender**") and approving the DIP Term Sheet;

4. approving a charge in favour of the DIP Lender to secure payment of the money advanced by the DIP Lender;
5. approving the Administration Charge (as defined below);
6. approving the D&O Charge (as defined below);
7. approving the sale process described in the Proposal Trustee's First Report to the Court (the "**First Report**");
8. authorizing the Debtors to enter into an agreement of purchase and sale with StormFisher Environmental Ltd. (in this capacity, the "**Stalking Horse Bidder**") in the form attached as **Exhibit "K"** to the Affidavit of Wayne H. Davis sworn October 13, 2015 (the "**Stalking Horse APA**"); and
9. extending the time for filing a proposal to December 11, 2015,

was heard this day at 80 Dundas Street, London, Ontario (the "**Court**").

ON READING the Motion Record of the Debtors, including the Affidavit of Wayne H. Davis sworn October 13, 2015 (the "**Davis Affidavit**"), and the exhibits thereto, the First Report of Deloitte Restructuring Inc. in its capacity as the Proposal Trustee of the Debtors (the "**Proposal Trustee**"), and on hearing the submissions of counsel for the Proposal Trustee, the Debtors, and such other counsel as appears,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Debtors' notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

ADMINISTRATIVE CONSOLIDATION

2. **THIS COURT ORDERS** that the proposal proceedings of Mustang GP Ltd. (estate number 35-2041153), Harvest Ontario Partners Limited Partnership (estate number 35-2041155) and Harvest Power Mustang Generation Ltd. (estate number 35-2041157) (collectively, the

“**Proposal Proceedings**”) are hereby administratively consolidated and are hereby authorized and directed to continue under the following joint title of proceedings:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MUSTANG GP LTD.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST POWER MUSTANG GENERATION LTD.**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Court only in the Harvest Power Mustang Generation Ltd. estate and court file, bearing Estate No./Court File No. 35-2041157.

DIP FINANCING

4. **THIS COURT ORDERS** that the execution by the Debtors of the DIP Term Sheet is hereby approved, *nunc pro tunc*, and the Debtors are hereby authorized and empowered to perform their obligations under the DIP Term Sheet and to obtain and borrow amounts under the DIP Term Sheet, provided that borrowings under such credit facility shall not exceed the principal amount of \$1,000,000, unless permitted by further order of this Court.

5. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute such credit agreements, mortgages, charges, hypothecs and security documents, guarantees or other definitive documents (such documents, together with the DIP Term Sheet, collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may reasonably be required by the DIP Lender pursuant to the terms thereof together with such modifications as may be agreed by the Debtors and the DIP Lender and consented to by the Proposal Trustee, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is granted a charge (the “**DIP Lender’s Charge**”) on all assets, rights, undertakings and properties of the Debtors, of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the “**Property**”), which shall not secure an obligations that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 14 and 15 of this Order.

7. **THIS COURT ORDERS** that, notwithstanding any other provisions of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Lender may, with leave of the Court: (i) cease making advances to the Debtors; and (ii) exercise any and all of its rights and remedies against the Debtors and the Property under or pursuant to the Definitive Documents and the DIP Lender’s Charge, including without limitation, set-off and/or consolidate any amounts owing by the DIP Lender to the Debtors against the obligations of the Debtors to the DIP Lender under the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim manager, or for a bankruptcy order against the Debtors and for the appointment of Deloitte Restructuring Inc. as trustee in bankruptcy of the Debtors; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or manager and manager of the Debtors or the Property.

8. **THIS COURT ORDERS AND DECLARES** that all claims of the DIP Lender pursuant to the Definitive Documents are not claims that may be compromised pursuant to any proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) (“**Proposal**”) filed by the Debtors or any plan of arrangement or compromise (“**Plan**”) filed by the Debtors under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as

amended (the "CCAA") without consent of the DIP Lender and, the DIP Lender shall be treated as unaffected in any Proposal, Plan or other restructuring with respect to any obligations outstanding to the DIP Lender under or in respect of the Definitive Documents.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtors shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Debtors as part of the costs of the Proposal Proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtors on bi-weekly basis.

10. **THIS COURT ORDERS** that the Proposal Trustee (including in its capacity as trustee in bankruptcy, if applicable), counsel for the Proposal Trustee (including in its capacity as counsel for the trustee in bankruptcy, if applicable), and counsel for the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 14 and 15 hereof.

D&O CHARGE

11. **THIS COURT ORDERS** that the Debtors shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtors after the commencement of the Proposal Proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of the Debtors shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000, as security for the indemnity

provided in paragraph 11 of this Order. The D&O Charge shall have the priority set out in paragraph 14 and 15 herein.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Debtors' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order.

PRIORITY OF COURT ORDERED CHARGES

14. **THIS COURT ORDERS** that the priority of the charges granted in this Order shall be as follows:

- (a) firstly, the Administration Charge to a maximum of \$150,000;
- (b) second, the D&O Charge to a maximum of \$2,000,000; and
- (c) thirdly, the DIP Charge.

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the D&O Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, municipal taxes (including realty taxes), charges and encumbrances, claims of secured creditors, statutory or otherwise, in favour of any person, notwithstanding the order of perfection or attachment (collectively, the "**Encumbrances**").

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property

that rank in priority to, or *pari passu* with, any of the Charges unless the Debtors also obtain the prior written consent of the Proposal Trustee, the DIP Lender and all other beneficiaries of the Charges, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by the pendency of these proceedings and the declarations of insolvency made herein; (b) any motion(s) or application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motions or applications; (c) the filing of any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, leases, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtors or the DIP Lender, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Debtors or the DIP Lender of any Agreement to which any one of them is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Kenton Group entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Kenton Group pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SALE PROCESS AND STALKING HORSE

19. **THIS COURT ORDERS** that the Sale Process set out in the First Report be and hereby is approved.

20. **THIS COURT ORDERS** that the Debtors and the Proposal Trustee be and are hereby authorized and empowered to take such steps as are necessary or desirable to carry out and perform their obligations under the Sale Process, provided that any definitive agreement to be executed by the Debtors in respect of the sale of all or part of the Property shall require further approval of the Court.

21. **THIS COURT ORDERS** that the Debtors are hereby authorized and directed, *nunc pro tunc*, to enter into the Stalking Horse APA and the Stalking Horse APA is hereby approved and accepted for the purpose of conducting the Sale Process.

22. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Debtors may disclose personal information of identifiable individuals to prospective bidders in the Sale Process and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evolution of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Debtors or in the alternative shall destroy all such information and certify such destruction to the Debtors. The purchase of the Property in the Sale Process shall be entitled to use the personal information provided to it, and related to the purchased assets, in a manner which is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Debtors, or ensure that all other personal information is destroyed.

CONFIDENTIAL EXHIBIT

23. **THIS COURT ORDERS** that Confidential Exhibit to the Davis Affidavit be and hereby is sealed pending the termination of the Proposal Proceedings or further order of the Court.

EXTENSION OF TIME TO FILE A PROPOSAL

24. **THIS COURT ORDERS** that the time within which the Debtors must file a proposal with the Official Receiver be and is hereby extended to December 11, 2015.

SERVICE OF MATERIALS AND NOTICE

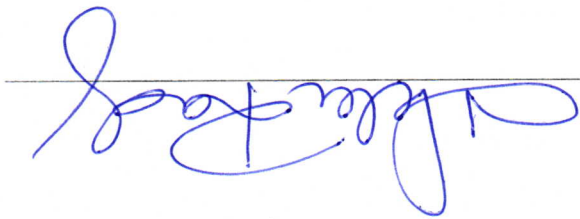
25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in the Proposal Proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<http://www.insolvencies.deloitte.ca>>’.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

AID AND ASSISTANCE

27. **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 Debtors, the Proposal Trustee and their 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 Debtors and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Debtors, Proposal Trustee and their agents in carrying out the terms of this Order.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST MUSTANG GP LTD.

Court File No. 35-2041153

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

Court File No. 35-2041155

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST POWER MUSTANG GENERATION LTD.

Court File No. 35-2041157

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**
Proceedings commenced at LONDON

**MOTION RECORD
(RETURNABLE OCTOBER 19, 2015)**

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