



No. S174308  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS INC.  
SWAHEALY HOLDINGS LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.

DEFENDANTS

**NOTICE OF APPLICATION**

Name of applicant: Deloitte Restructuring Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc.

To: The Service List attached hereto as **Schedule "A"**.

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Thursday, December 12, 2019 at 9:45 a.m. for the order set out in Part 1 below.

**Part 1: ORDER SOUGHT**

1. An approval and vesting order substantially in the form attached as **Schedule "B"** hereto (the "**Vesting Order**").

## Part 2: FACTUAL BASIS

### Background

1. By Order dated May 12, 2017 (the "**Receivership Order**"), made on the application of Industrial Alliance Insurance and Financial Services Inc. ("**IA**"), the Receiver was appointed as receiver, without security, of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership ("**Wedgemount LP**"), Wedgemount Power (GP) Inc. ("**Wedgemount GP**") and Wedgemount Power Inc. ("**Wedgemount Power**" and collectively with Wedgemount LP and Wedgemount GP, the "**Wedgemount Entities**").
2. The Receiver's powers are detailed in paragraph 2 of the Receivership Order, and include, among others, the power to take and maintain possession and control of the assets of the Wedgemount Entities; the power to manage, operate and carry on the business of the Wedgemount Entities; and the power to market and sell the assets of the Wedgemount Entities (subject to Court approval if any one transaction exceeds \$50,000 or if the aggregate of transactions exceeds \$250,000).
3. The Receivership Order also provides, among other things, that all rights and remedies against the Wedgemount Entities, the Receiver, or affecting the assets, undertakings and properties of the Wedgemount Entities are stayed and suspended (the "**Stay**").
4. The Wedgemount Entities are the owner and developer of a partly-constructed independent, run-of-river power project located on Wedgemount Creek, near Whistler, British Columbia (the "**Project**").
5. The Project was developed with the intention to generate electricity to be sold to British Columbia Hydro and Power Authority ("**BCH**"), and the Wedgemount Entities and BCH entered into an Electricity Purchase Agreement dated March 6, 2015 (the "**EPA**"). Pursuant to the EPA, BCH agreed to purchase electricity generated by the Project upon completion of construction and connection to the BCH grid (a process known as 'interconnection').

### Sale Process – Initial Interest and Phase I

6. In the first few weeks of the Receiver's appointment, the Receiver and IA were contacted by several parties that potentially were interested in acquiring the Project.
7. Owing to the partly-constructed status of the Project at the time the Receiver was appointed, the Receiver did not compile any form of bid package for the marketing of the Project, nor did it run a formal sale process, at the outset of its appointment. However, in response to enquiries from numerous potential buyers of the Project and related assets ("**Interested Parties**"), and the Receiver's desire to assess the level of interest in and potential value of the Project in its current state, the Receiver undertook an informal sale process in respect of the Project and related assets.

8. On or about June 20, 2017, the Receiver:
  - (a) established a data room for Interested Parties to review information regarding the Project. All Interested Parties were required by the Receiver to enter into a binding non-disclosure agreement (“**NDA**”) with the Receiver before being granted access to the data room; and
  - (b) invited Interested Parties to submit non-binding letters of intent (“**LOIs**”) for the purchase of the Project and related assets, including Wedgemount LP’s right, title and interest in and under the EPA, by July 14, 2017.
9. Initial non-binding LOIs were received from nine Interested Parties. However, the LOIs were submitted using various different assumptions regarding timing of the commercial operation date (“**COD**”), assignment of debt, and acquisition structure. At the request of the Receiver (and following provision of clarification on potential timing of COD and various other matters), four Interested Parties submitted revised LOIs on July 31, 2017.
10. In early August 2017, having assessed the LOIs received and consulted with IA, the Receiver determined that it was necessary to impose more structure on the sale process, and three preferred bidders were selected to move to the second phase (Phase II) and undertake detailed due diligence regarding the Project.

#### **Sale Process – Phase II**

11. On August 14, 2017, the Receiver requested that the preferred bidders deliver binding offers for the acquisition of the Project by September 15, 2017.
12. The data room remained open to all Interested Parties who had executed NDAs. Given the Project had not been formally marketed by the Receiver, if new parties expressed an interest in the Project, they were provided access to the data room upon execution of an NDA and were informed as to the status of the process being undertaken by the Receiver to realize the assets of the Wedgemount Entities (the “**Sale Process**”).
13. Throughout Phase II, the Receiver received and responded (via the data room) to multiple information requests and queries from Interested Parties related to various aspects of the Project, and on September 14, 2017, the deadline for submission of binding offers was extended to October 2, 2017, as the Receiver and its consultant were working on providing additional engineering information to the Interested Parties.
14. On October 2, 2017, binding offers were received from two Interested Parties, and non-binding offers were received from a further four Interested Parties.

15. The Receiver had planned to enter into discussions with a preferred bidder in October 2017, with the view to negotiating and executing a definitive asset purchase agreement by the end of October 2017. However, in late September and early October 2017, the Receiver had the first indication from BCH that it intended to rely on its termination rights pursuant to the EPA.

### **Suspension of Sale Process – Negotiations with BCH**

16. Despite efforts over the following weeks to reach a resolution with BCH, those discussions ultimately were unsuccessful and on January 19, 2018, BCH filed a Notice of Application seeking leave to lift the Stay in order to exercise its termination rights under the EPA (the “**BCH Lift Stay Application**”).
17. Given the importance of the EPA to the viability of the Project, the Sale Process was effectively put on hold from early October 2017 until May 2019.
18. The filing of the BCH Lift Stay Application initiated a period of approximately seven months during which BCH filed various applications and appeals, and the Receiver and IA were required to file materials in response in order to preserve the EPA and the value of the Wedgemount Entities’ assets for the benefit of stakeholders in these proceedings (collectively, the “**BCH Litigation**”). The BCH Litigation came to an end on July 9, 2018, when Mr. Justice Groberman of the British Columbia Court of Appeal dismissed BCH’s appeals (the “**July 9 Decision**”).
19. Despite the July 9 Decision, BCH continued to assert that it intended to exercise any termination rights that it had at its earliest opportunity, and that if the Receiver proceeded with completion or sale of the Project it did so at its own risk. BCH also pointed out to the Receiver that BCH was required to consent to any assignment of the EPA, but indicated that it would be willing to enter into discussions with the Receiver in an attempt to settle the ongoing disputes with respect to the EPA.
20. Based on communications with Interested Parties, it became clear to the Receiver that a resolution of the issues regarding the EPA would be a condition precedent of any sale transaction, and that absent a resolution, there would be a material adverse impact on the purchase price Interested Parties were prepared to pay for the Project.
21. As a result, the Receiver entered into discussions with BCH, and those discussions continued for the next 11 months. In early May, 2019, BCH, the Receiver and IA resolved the issues in connection with BCH and the EPA. BCH supports this application and the assignment of an amended EPA (the “**Amended EPA**”) to a qualified new proponent.

## **Suspension of Sale Process – Other Negotiations and Activities**

### 28165 Yukon Inc.

22. A section of the Project's interconnection runs through the WedgeWoods residential subdivision (the "**Subdivision**"). The distribution line will pass through ducting buried under land within and adjacent to the roadway known as Riverside Drive and the powerhouse for the Project is located on land within the Subdivision.
23. The Subdivision was developed and originally owned by 28165 Yukon Inc. ("**Yukon**"). Wedgemount LP entered into a Repairs Agreement with Yukon, among other parties, dated February 13, 2015 (the "**Repairs Agreement**"), pursuant to which Yukon was entitled to a royalty payment based on a percentage of the Project's net revenue.
24. In order to have access to certain portions of the ducting and resolve other issues as between the Wedgemount Entities and Yukon, and following lengthy negotiations, in late April 2019, the Receiver and IA entered into a mutual release and settlement agreement with Yukon (the "**Yukon Settlement Agreement**").

### First Nations

25. Certain components of the Project are located on or travel across lands of cultural significance to the Lil'wat Nation and the Squamish Nation (together, the "**Nations**"). The Nations entered into an Impacts and Benefits Agreement with Wedgemount Power, dated August 1, 2014 (the "**Initial IBA**"). Wedgemount Power later assigned all of its rights and obligations in and under the Initial IBA to Wedgemount LP. The Nations consented to the assignment in an Assumption and Acknowledgement Agreement dated November 25, 2014 (together with the Initial IBA, the "**IBA**").
26. In order to address concerns relating to the revised route of interconnection for the Project raised by the Squamish Nation, the Receiver entered into negotiations with the Nations and their respective legal counsel, which culminated in late September 2017 in agreement in principle as to the terms of a draft amending agreement to the IBA (together with the IBA, the "**Amended IBA**"). Following conclusion of the BCH Litigation, the Amended IBA was ratified by the Chiefs and Councils of both Nations and executed on September 12, 2018.
27. The Receiver has continued to liaise with the Nations regarding the status of the Project, including this application.

### Progression of Project

28. Throughout the period during which the Receiver was negotiating with BCH, Yukon and the Nations, it also was working diligently to advance the Project and preserve its value, including achieving certain key milestones. The Receiver's activities are set out in more detail in the Second Report of the Receiver dated December 5, 2019.

### **Sale Process – Phase III**

29. As a result of the settlement with BCH in relation to the EPA, entry into the Yukon Settlement Agreement, and the significant progress the Receiver had made in connection with the necessary licences and permits for the Project, by May 2019 the risk profile associated with completion of the Project had been materially reduced.
30. Given the partly-constructed and partly-permitted status of the Project, the Receiver was of the view that the likely acquirer would be a strategic buyer with similar assets located in the vicinity of the Project, the ability to mobilize a local team to complete construction, and knowledge of the British Columbia permitting process. Given the significant interest received in the first two phases of the Sale Process, the Receiver was confident that the opportunity to acquire the Project was well known to these types of potential buyers (and more broadly).
31. In May 2019, the Receiver began discussions with the party that had submitted the highest and most qualified bid in Phase II of the Sale Process ("**Bidder A**").
32. Following discussions with IA, and subsequently with Bidder A, the Receiver decided to explore the option of a stalking horse bid procedure for the Project. Bidder A undertook additional Project diligence, and on June 7, 2019, submitted a binding offer to acquire the Project by way of a stalking horse bid. Following further negotiations, an improved offer was accepted by the Receiver, subject to Bidder A completing its final diligence and negotiation of a mutually acceptable asset purchase agreement ("**Stalking Horse APA**") and stalking horse bid procedure.
33. Despite extensive negotiations, the Receiver and Bidder A were unable to come to terms on a Stalking Horse APA, and in August, 2019, the Receiver, in consultation with IA, moved ahead with an accelerated bid process (the "**Final Bid Process**").

### **Sale Process – Phase IV**

34. From May to August 2019, Interested Parties that had executed an NDA continued to have access to the data room and the Receiver posted various updates related to Project developments and documentation.

35. The Receiver also provided updates to other Interested Parties on an ad-hoc basis. Interested Parties were informed that the Project would be formally marketed in due course via a relatively short sale process and were encouraged to review the updates to the data room and to start work on Project diligence.
36. On August 21, 2019, the Receiver sent a teaser document outlining the current status of the Project and key investment highlights (the "**Teaser**"), along with guidelines for the submission of final binding bids (the "**Final Bid Procedure**"), including the form of asset purchase agreement to be used as the basis of offers, by email to all Interested Parties. The Teaser and Final Bid Procedure were also sent to a number of other potential strategic buyers that Deloitte's infrastructure advisory practice determined may be interested in acquiring the Project and the Receiver made phone calls to these parties.
37. The Receiver also marketed the Project by way of a notice in the "Insolvency Insider", a weekly email publication sent to approximately 4,700 subscribers. Due to the notice, and general word of mouth, the Receiver executed a number of additional NDAs and allowed these Interested Parties access to the data room.
38. In total, the Teaser and Final Bid Procedure were sent to approximately 44 Interested Parties. Through the course of the Sale Process, the Receiver executed NDAs with 36 Interested Parties for access to the data room, and site visits were undertaken with 13 Interested Parties.
39. Binding offers for the Project were due by noon PDT on September 20, 2019. Due to requests from Interested Parties for further time to undertake due diligence, this deadline was extended to midnight PDT on September 25, 2019.
40. Proposals/offers were received from four Interested Parties. An overview of the offers received and subsequent negotiations with bidders is provided in the Confidential Supplement to the Second Report of the Receiver, dated December 5, 2019.
41. After discussions with IA, on October 31, 2019 the Receiver notified Concord Green Energy Inc. ("**Concord**") that it had been selected as the successful bidder with a view to negotiating the terms of an asset purchase agreement (the "**Concord APA**"). On November 1, 2019, the Receiver received payment of \$1,000,000 from Concord as a good faith deposit, creditable against the final purchase price on closing of the transaction (the "**Transaction**") contemplated by the Concord APA, as subsequently amended (discussed below).

### **Proposed Transaction**

42. On November 18, 2019 the Receiver entered into the Concord APA with Concord Wedgemount Creek General Partnership acting through its general partners 11739484 Canada Inc. and 11739522 Canada Inc. (collectively, the "**Purchaser**"), pursuant to which the Purchaser has agreed to purchase, and the

Receiver has agreed to sell, all of the Wedgemount Entities' right, title, and interest in and to the Purchased Assets (as defined in the Concord APA, as subsequently amended), free and clear of all encumbrances (other than certain permitted encumbrances), for cash consideration of \$12,750,000 plus applicable taxes (the "**Purchase Price**").

43. On December 5, 2019, the Receiver and the Purchaser entered into an agreement to amend the Concord APA (as so amended, the "**Amended Concord APA**").
44. Pursuant to the terms of the Amended Concord APA, closing of the Transaction is scheduled to occur on the fifth business day following the date on which the Vesting Order is granted by the Court, or as otherwise agreed upon by the Receiver and Purchaser ("**Closing**").
45. Conditions precedent to Closing are stipulated in sections 18 to 20 of the Amended Concord APA. The most material closing conditions are summarized as follows:
  - (a) Granting of the Vesting Order by the Court;
  - (b) Payment of the balance of the Purchase Price by the Purchaser to the Receiver;
  - (c) Assignment of the Amended IBA to, and assumption of Wedgemount LP's obligations pursuant to the Amended IBA by, the Purchaser;
  - (d) Assignment of the Amended EPA to the Purchaser;
  - (e) IA and the Purchaser having entered into a credit agreement for the financing in respect of the Project and all conditions to funding thereunder having been satisfied (the "**Financing CP**");
  - (f) Receipt by the Receiver of evidence that BCH has accepted an offer of tenure from the Ministry of Forests, Lands and Natural Resource Operations ("**MFLNRO**") related to Section 2 of the interconnection; and
  - (g) The Receiver having provided the Required Notices (as defined in the Amended Concord APA) and, in the case of the Final Distribution Generator Interconnection Agreement (the "**Final DGIA**"), no objection having been raised by BC Hydro within 15 business days of receipt of such Required Notice.
46. With respect to the assignment of the Amended IBA to the Purchaser (and related assumption of Wedgemount LP's obligations), the Nations have consented to the assignment, and have provided executed copies of the IBA Agreement (as defined in the Amended Concord APA), to be held in escrow pending Closing.
47. With respect to the assignment of the Amended EPA to the Purchaser, BCH has completed its customary diligence in relation to the Purchaser and has confirmed its consent to the assignment, subject to Court approval of the Transaction.



48. With respect to the Financing CP, the Receiver has reviewed an executed copy of a financing term sheet, and understands that the Purchaser and IA are making good progress with respect to a definitive credit agreement and related financing documentation.
49. Discussions with BCH related to its review of the tenure offer from MFLNRO are ongoing, but BCH has not raised any material concerns, and the review process is expected to be complete by mid-December 2019.
50. BCH has confirmed its consent to the assignment of the Final DGIA. BCH and the Receiver are in the process of drafting a suitable assignment and assumption agreement, and it is expected that this can be completed prior to Closing.
51. While the Purchase Price is lower than initially indicated by Interested Parties following Phase II of the Sale Process, the highest offers received during Phase II of the Sale Process included several material conditions precedent to closing, and Interested Parties subsequently carried out further Project and legal diligence prior to submission of offers in the Final Bid Process.
52. The principal secured creditor, IA, is supportive of the Transaction. The anticipated net realizations in the receivership proceedings (including the proceeds of the Transaction) are expected to be lower than the principal amount owed to IA (the "**IA Principal Amount**"). and IA is expected to suffer a deficit of more than \$3 million in respect of the IA Principal Amount. As a result, IA is the stakeholder most directly affected by the terms of the Transaction.
53. The Receiver is of the opinion that the terms of the Transaction are reasonable and appropriate under the circumstances and will maximize the value of the Wedgemount Entities' assets.
54. With respect to Closing, time is of the essence giving the requirement to keep advancing the Project in order to achieve a mid- to late summer COD (if COD is delayed, carrying costs increase and Project revenues are also delayed). In addition, the insurance coverage in respect of the Project expires on December 31, 2019 and the Receiver has been advised by the underwriter that it is not prepared to extend coverage beyond that date.

### **Part 3: LEGAL BASIS**

1. The factors to be considered when determining if a receiver has sold assets in a commercially reasonable manner include:
  - (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which the offers have been obtained; and

- (d) whether there had been unfairness in the working out of the process.

***Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137**

Applied in British Columbia in *Veris Gold Corp.*, Re, 2015 BCSC 1204 and *Digital Domain Media Group Inc.*, Re, 2012 BCSC 1567

2. With respect to the factors set out in *Soundair*, the Receiver submits as follows:
- (a) The Sale Process in this matter has been robust and has engaged many Interested Parties, including strategic buyers, financial buyers and high net worth investors. While the Final Bid Process was relatively short in duration, this was required in order to preserve the Project value, and followed an extensive and prolonged Sale Process throughout the course of the receivership proceedings. The Project has been exposed to the market for some time.
- (b) As noted above, the principal secured creditor, IA, is supportive of the Transaction. Several other stakeholders in the Project also stand to benefit from the Project being sold to a capable developer and operator, including the Nations, the owners of the Subdivision, the guarantors of the original financing for the Project, and the many professionals and contractors working on the Project.
- (c) The third and fourth factors are most conveniently considered together. The Receiver engaged in an extensive Sale Process and ensured that any Interested Party was provided with access to the data room throughout the Sale Process and had the opportunity to conduct appropriate due diligence. Furthermore, the Receiver worked closely with IA throughout the Sale Process.
3. The Receiver specifically relies on:
- (a) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, including Part XI thereof;
- (b) *Law and Equity Act*, R.S.B.C. 1996, c. 253, including s. 37 and s. 64 thereof;
- (c) Rules 8-1 and 13-1 of the *Supreme Court Civil Rules*; and
- (d) the inherent jurisdiction of this Court.

**Part 4: MATERIAL TO BE RELIED ON**

1. Receiver's First Report to Court, dated April 2, 2018.
2. Confidential Supplement to the First Report, dated April 2, 2018.
3. Second Receiver's Report to Court, dated December 5, 2019.
4. Confidential Supplement to the Second Report, dated December 5, 2019.
5. Such further and other material as counsel may advise and this Honourable Court may permit.

The applicant(s) estimate(s) that the application will take 30 minutes.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: December 5, 2019



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Signature of Vicki Tickle  
Lawyer for the Receiver

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

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Date: [dd/mmm/yyyy]

\_\_\_\_\_  
Signature of  Judge  Master

**Appendix**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

**SCHEDULE "A"**

**SERVICE LIST**

<p><b>Gowling WLG (Canada) LLP</b> 2300 – 550 Burrard Street Vancouver, BC V6C 2B5</p> <p><b>Colin D. Brousson</b> Tel: 604-891-2286 email: <a href="mailto:colin.brousson@gowlingwlg.com">colin.brousson@gowlingwlg.com</a></p> <p><b>Jeffrey Bradshaw</b> 604-443-7649 email: <a href="mailto:Jeffrey.bradshaw@gowlingwlg.com">Jeffrey.bradshaw@gowlingwlg.com</a></p> <p>Assistant: <a href="mailto:michele.hay@gowlingwlg.com">michele.hay@gowlingwlg.com</a> Tel: 604-443-7628</p> <p><i>Counsel for the Plaintiff</i></p>	<p><b>Lawson Lundell LLP</b> Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p><b>Peter J. Roberts</b> Tel: 604.685.3456 Fax: 604.669.1620 <a href="mailto:proberts@lawsonlundell.com">proberts@lawsonlundell.com</a></p> <p><i>Counsel for Wedgemount Power Limited Partnership, Wedgemount Power Inc. and Wedgemount Power (GP) Inc.</i></p>
<p><b>Miller Thomson LLP</b> #400 - 725 Granville Street Vancouver, BC V7Y 1G5</p> <p><b>Gordon G. Plottel</b> <a href="mailto:gplottel@millerthomson.com">gplottel@millerthomson.com</a></p> <p><b>Amanda Baron</b> <a href="mailto:abaron@millerthomson.com">abaron@millerthomson.com</a></p> <p><i>Counsel for Paradise Investment Trust, 28165 Yukon Inc. and Sunny Paradise Inc.</i></p>	<p><b>Borden Ladner Gervais LLP</b> 1200 Waterfront Centre 200 Burrard Street Vancouver, BC V7X 1T2</p> <p><b>Magnus C. Verbrugge</b> <a href="mailto:mverbrugge@blg.com">mverbrugge@blg.com</a></p> <p><b>Lisa Hiebert</b> <a href="mailto:lhiebert@blg.com">lhiebert@blg.com</a></p> <p><i>Counsel for British Columbia Hydro and Power Authority</i></p>
<p><b>Ratcliff &amp; Company LLP</b> 500 - 221 West Esplanade North Vancouver BC V7M 3J3</p> <p><b>F. Matthew Kirchner</b> <a href="mailto:mkirchner@ratcliff.com">mkirchner@ratcliff.com</a></p> <p><b>Aaron Bruce</b> <a href="mailto:abruce@ratcliff.com">abruce@ratcliff.com</a></p> <p><i>Counsel for Squamish Nation</i></p>	<p><b>Watson Goepel LLP</b> 1700-1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p><b>Thomas Keast, QC</b> <a href="mailto:tkeast@watsongoepel.com">tkeast@watsongoepel.com</a></p> <p><i>Counsel for Brent Allan Hardy and David John Ehrhardt</i></p>

<p><b>Cheakamus Community Forest Society</b>  c/o Resort Municipality of Whistler  4325 Blackcomb Way  Whistler, BC V0N 1B4  Email: <a href="mailto:info@cheakamuscommunityforest.com">info@cheakamuscommunityforest.com</a></p> <p>If email address above still bounces back send to the following</p> <p><b>Heather Beresford</b> at Resort Municipality of Whistler – <a href="mailto:hberesford@whistler.ca">hberesford@whistler.ca</a></p>	<p><b>Ministry of Justice and Attorney General</b>  Legal Services Branch  Revenue and Taxation Group  P.O. Box 9289 Stn Prov Govt  4<sup>th</sup> Floor – 1675 Douglas Street  Victoria, BC V8W 9J7</p> <p><b>Aaron Welch</b>  Tel: 250-356-8589 Fax: 250-387-0700  Email: <a href="mailto:Aaron.Welch@gov.bc.ca">Aaron.Welch@gov.bc.ca</a>  <a href="mailto:AGLSBRevTax@gov.bc.ca">AGLSBRevTax@gov.bc.ca</a></p> <p><i>Counsel for Her Majesty the Queen in Right of British Columbia</i></p>
<p><b>Colmac Capital Corp.</b>  #514 – 822 5<sup>th</sup> Ave  Calgary, AB T2P 5R4</p> <p>email: <a href="mailto:dwdelain@shaw.ca">dwdelain@shaw.ca</a>;  <a href="mailto:kmaclean@colmaccapital.com">kmaclean@colmaccapital.com</a></p>	<p><b>The Ehrhardt 2011 Family Trust</b>  2011 Family Trust  5403 Buckingham Avenue  Burnaby, BC V5E 1Z9</p> <p><b>David Ehrhardt, as trustee of the Ehrhardt</b></p>
<p><b>Travelers Capital Corporation</b>  Suite 501 – 4180 Lougheed Hwy.  Burnaby, BC V5C 6A7</p> <p><b>Mark Bohn</b>  Email: <a href="mailto:mbohn@travelerscapital.com">mbohn@travelerscapital.com</a></p>	<p><b>Eco Flow Energy Corporation</b>  330 – 500 Victoria Street  Prince George, BC V2L 2J9</p> <p>email: <a href="mailto:pzell@ecoflowenergy.com">pzell@ecoflowenergy.com</a></p>
<p><b>Swahealy Holding Limited</b>  1266 Burns Road  Gibsons, BC V0N 1V1</p>	<p><b>Calavia Holdings Ltd.</b>  2511 Lawson Avenue  West Vancouver, BC V7Y 2G1</p>
<p><b>Lil'wat Nation</b>  82 Lr 10 Road,  Mount Currie, BC V0N 2K0  Fax: 604-894-1518</p> <p><b>Kerry Mehaffey, CEO, Lil'wat Management Services LP</b>  email: <a href="mailto:info@lilwat.ca">info@lilwat.ca</a></p> <p>David W. Dorrans Law Corporation  <b>David W. Dorrans</b>  email: <a href="mailto:dorransd@dwdlawcorp.ca">dorransd@dwdlawcorp.ca</a></p>	<p><b>Bank of Montreal</b>  First Canadian Place, Mezzanine Level  100 King Street W  Toronto, ON M5X 1A3</p> <p><b>Marina Wilhelm</b> Fax: (416) 867-2744  <b>Paul Kyte</b> Fax: (416) 867-2744</p>
<p><b>Points West Hydro Power Limited Partnership by its general partner Points West Hydro (GP) Inc.</b>  2400, 525 – 8<sup>th</sup> Avenue SW  Calgary, AB T2P 1G1</p>	

**SCHEDULE "B"**  
**FORM OF VESTING ORDER**





the Second Report dated December 5, 2019 (the "**Confidential Report**", and together with the Second Report, the "**Reports**");

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the service list maintained by the Monitor in this proceeding is hereby dispensed with.
2. The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated November 18, 2019, as amended by the Amending Agreement dated December 5, 2019 (together, the "**Sale Agreement**") between the Receiver and Concord Wedgemount Creek General Partnership, acting through its general partners 11739484 Canada Inc. and 11739522 Canada Inc. (collectively, the "**Purchaser**"), a copy of which is attached hereto as Schedule "B", is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").
3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "C" hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated May 12, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "D" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from McMillan LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
  - a) enter the Purchaser as the registered owner of the Real Property Interests as identified in Schedule "F" hereto (collectively, the "**Real Property Interests**"), together with all of the Debtors' buildings and other structures, facilities and

improvements located thereon and fixtures, systems, interests, licences, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements, appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in respect of the Real Property Interests, and this court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Real Property Interests is a good and safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Real Property Interests all of the registered Encumbrances except for those listed in Schedule "E".
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
  6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
  7. Subject to the terms of the terms of the Sale Agreement, vacant possession of the Purchased Assets shall be delivered by the Receiver to the Purchaser at 12:00 p.m. on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E".
  8. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
  9. Notwithstanding:
    - a) these proceedings;
    - b) any applications for a bankruptcy order in respect of the Debtors, or any of them, now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
    - c) any assignment in bankruptcy made by or in respect of the Debtors, or any of them,

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

constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
12. Endorsement of this Order by counsel appearing, other than counsel for the Receiver, is hereby dispensed with.

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

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Signature of Vicki Tickle  
Lawyer for Deloitte Restructuring Inc.

BY THE COURT

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REGISTRAR

**SCHEDULE "A" TO VESTING ORDER**

**List of Counsel**

<b>Name of Counsel</b>	<b>Party Represented</b>

**SCHEDULE "B" TO VESTING ORDER**

**Sale Agreement**

**SCHEDULE "C" TO VESTING ORDER**

**Form of Receiver's Certificate**

No. S174308  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.

DEFENDANTS

**RECEIVER'S CERTIFICATE**

**RECITALS:**

- A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated May 12, 2017, Deloitte Restructuring Inc. was appointed as the receiver (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated December 12, 2019 (the "**Approval and Vesting Order**"), the Court approved the asset purchase agreement dated November 18, 2019 as amended by the Amending Agreement dated December 5, 2019 (the "**Sale Agreement**") between the Receiver and Concord Wedgemount Creek General Partnership acting

through its general partners 11739484 Canada Inc. and 11739522 Canada Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 18, 19 and 20 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order or the Sale Agreement, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing set out in sections 18, 19 and 20 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**Deloitte Restructuring Inc., in its capacity as Receiver of the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc., and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:



## **SCHEDULE "D" TO VESTING ORDER**

### **Encumbrances**

British Columbia Personal Property Registry ("**BCPPR**") Base Registration No. 683926I dated June 24, 2015 in favour of Travelers Capital Corporation.

BCPPR Base Registration No. 999441J dated May 11, 2017 in favour of Her Majesty the Queen in Right of the Province of British Columbia.

BCPPR Base Registration No. 999451J dated May 11, 2017 in favour of Her Majesty the Queen in Right of the Province of British Columbia.

BCPPR Base Registration No. 683867I dated June 24, 2015 in favour of Travelers Capital Corporation.

BCPPR Base Registration No. 249488H dated March 20, 2013 in favour of 28165 Yukon Inc., Paradise Investment Trust and Sunny Paradise Holdings Inc.

**SCHEDULE "E" TO VESTING ORDER**

**Permitted Encumbrances**

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**SCHEDULE "F" TO VESTING ORDER**

**Real Property Interests**

Statutory Right of Way No. CA3110108

Statutory Right of Way No. CA6923911